

2003

Montana Codes Annotated

**MCA Title 15; Chapter 70
Gasoline and Vehicle Fuel Taxes**

**MCA Title 18; Chapter 11
State – Tribal Cooperative Agreement**

Administrative Rules of Montana

**ARM Title 18; Chapter 9
Motor Fuels – Gasoline Tax**

**ARM Title 18; Chapter 10
Motor Fuels Tax Division – Other Fuels**

**ARM Title 18; Chapter 11
Motor Fuels - Seizure**

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**Prepared by:
Montana Department of Transportation**

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Title 15; Chapter 70. Gasoline and Vehicle Fuels Taxes

Part 1. General Provisions

15-70-101. Disposition of funds.

(1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account. Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of \$16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of \$100,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of \$6,306,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of \$10,360,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city unless revised boundaries based on the location of the urban area have been approved by the department of transportation and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be

disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of \$25,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs.

15-70-102. Allocation of funds -- participation in railroad grade crossing protection.

(1) The amount determined necessary may be allocated from the state special revenue fund, highway revenue account, for each fiscal year for expenditures and commitments made for participation by the department of transportation with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary, or urban systems within the state. The department of transportation shall select those grade crossings in the state that, in the opinion of the department, are most in need of additional crossing protection and shall finance the cost of the improvements solely from this fund.

(2) Signal protection provided under this section is limited to electric or automatic flashing lights or gates, depending on the amount and nature of the hazards present at the crossing, and participation in construction of the signals must be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state. The account may not be used for protection of grade crossings on the secondary system where the protection is considered necessary and when the cost is financed in part with federal-aid highway funds.

(3) In addition to the funds allocated, counties and cities may authorize the use of funds available to counties and cities under the provisions of 15-70-101 for participation in the installation in grade crossing protection within the county or city.

15-70-103. Time of mailing and filing.

(1) Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within 30 days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

(2) If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States post office of such registration, certification, or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance, or other document was mailed to the addressee, and the date of registration, certification, or certificate shall be deemed the postmarked date. If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday, or legal holiday, the filing shall be considered timely if done on the next business day. Such reports shall be considered filed or received on the date or as provided in this chapter.

15-70-104. Rules to be established by department.

(1) The department of transportation shall adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of:

- (a) part 2;
- (b) part 3;
- (c) part 7; and
- (d) the International Fuel Tax Agreement authorized by 15-70-121.

15-70-105. Writeoff of collection of tax, penalty, or interest -- rules.

(1) (a) The department of transportation may write off the collection of any tax, penalty, or interest due to the state under this chapter whenever the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest.

(b) The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest.

(c) If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall adopt rules to establish the procedures to carry out the purposes of this section.

15-70-106 and 15-70-107 reserved.**15-70-108. Payment of taxes by negotiable instrument.**

The department of transportation is not bound by conditions pertaining to endorsement by the department that are placed on a negotiable instrument by the maker or drawer, tendered to the department for the payment of a tax liability or other liabilities, unless:

- (1) the debtor and the department have previously entered into a written agreement that specifies the amount of the debtor's liability; and
- (2) the amount tendered is in accordance with the written agreement.

15-70-109 reserved.**15-70-110. Authority to collect delinquent motor fuel taxes -- offset -- hearing.**

(1) The department of transportation shall collect motor fuel taxes that are delinquent as determined under this chapter.

(2) To collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a hearing on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

(5) The department shall provide the taxpayer with notice of the right to request a hearing under the contested case procedures of Title 2, chapter 4, on the matter of the offset action or the department's intent to file a claim on behalf of the taxpayer. A request for hearing must be made within 30 days of the date of the notice. If a hearing is requested, it must be held within 20 days of the request.

15-70-111. Judicial review and appeals.

Any final written determination by the director of the department of transportation under this chapter may be appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by the district court of Lewis and Clark County, and an appeal may be taken from the judgment of the district court to the supreme court.

15-70-112. Definitions.

As used in this chapter, the following definitions apply:

- (1) "Department" means the department of transportation as provided for in 2-15-2501.
- (2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.
- (3) "Taxes" means the taxes provided for in this chapter.
- (4) "Total remittance" means taxes, interest, and penalties collected under this chapter and cleanup fees collected by the department as provided in 75-11-314.

15-70-113. Total remittance payable by electronic funds transfer.

- (1) Total remittance due the state may be paid by electronic funds transfer.
- (2) If the payment of total remittance is by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment must be made on the first business day following the Saturday, Sunday, or legal holiday.
- (3) If the payment of the tax due on gasoline or special fuel pursuant to 15-70-205 and 15-70-344 is made by electronic funds transfer, the payment due date is 5 days after the 25th day of each calendar month.

15-70-114. Electronic filing of tax returns and required information.

The department may require a person, including an importer, exporter, common carrier, private carrier, or contract carrier, who receives or dispenses fuel and who is licensed or not licensed under this chapter, to file tax returns and information required by the department in an approved, computer-generated, magnetic media data format.

15-70-115. Rules.

The department shall adopt rules necessary to implement 15-70-112 through 15-70-115, including but not limited to rules:

- (1) coordinating the filing of tax returns by electronic means with the payment of total remittance by electronic funds transfer;
- (2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the payment of total remittance; and
- (3) specifying the form and content of information required by the department in an approved, computer-generated, magnetic media data format in order to ensure the proper receipt of the information.

15-70-116 through 15-70-120 reserved.

15-70-121. International Fuel Tax Agreement.

(1) The department of transportation may enter into the International Fuel Tax Agreement for audits, exchange of information, and collection and distribution of motor fuel taxes pertaining to users of motor fuel in fleets of motor vehicles operated or intended to operate across jurisdictional boundaries. The International Fuel Tax Agreement is not effective unless it is in writing and is signed by the department and the department has adopted rules implementing the agreement.

(2) The agreement may determine:

- (a) the base jurisdiction for motor fuel users;
- (b) motor fuel user records requirements;
- (c) audit procedures;
- (d) procedures for the exchange of information;
- (e) persons eligible for tax licensing;
- (f) the definition of qualified motor vehicles;
- (g) bonding requirements;
- (h) reporting requirements and periods;
- (i) uniform penalty and interest rates for late reporting or payment of taxes;
- (j) methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction; and
- (k) other provisions to facilitate the administration of the agreement.

(3) The department may, as required by the terms of the agreement, forward to officers of another jurisdiction any information in its possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuel. The department may disclose to officers of another jurisdiction the location of offices, motor vehicles, and other real and personal property of users of motor fuel.

(4) The agreement may provide each jurisdiction authority to audit the records of persons based in the jurisdiction to determine if the motor fuel taxes due each jurisdiction are properly reported and paid. Each jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction to each jurisdiction in which the person has taxable use of motor fuel. For a person not based in Montana who has taxable use of motor fuel in Montana, the department may serve the audit findings received from another jurisdiction in the form of an assessment on the person, as though an audit was conducted by the department.

(5) The agreement entered into pursuant to this section does not preclude the department from auditing the records of any person covered by the provisions of this chapter.

(6) If the specific requirements of the agreement, as the agreement reads on the effective date of adoption by the department, differ from the general provisions of this chapter or other rules promulgated by the department, the rules implementing the cooperative agreement prevail.

(7) The legal remedies for a person served with an order or assessment under this section are as prescribed in this chapter.

(8) As used in this section:

- (a) "agreement" means the International Fuel Tax Agreement provided for in this section; and
- (b) "motor fuel" means gasoline as defined in 15-70-201 and special fuel as defined in 15-70-301.

15-70-122. Collection of fuel tax.

The department of transportation may establish procedures under the International Fuel Tax Agreement to provide for the billing, collection, and administration of fuel taxes for those owners who proportionally register their fleet vehicles through the department under 61-3-711 through 61-3-733.

15-70-123. Report by unlicensed petroleum dealer -- definition -- penalty.

(1) The department of transportation may require a petroleum dealer who is not licensed by the department under Title 15, chapter 70, to file, within 30 days of the end of a quarter, on a form prescribed by the department a report of the amount of fuel received and sold during the quarter. The report must also contain other information as required by the department.

(2) As used in this section, "petroleum dealer" means a dealer who:

- (a) is directly or indirectly engaged in delivering, transporting, or distributing gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) in this state; or
- (b) offers or advertises to sell, refine, manufacture, or store gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) in this state.

(3) A petroleum dealer who fails to file the report required by subsection (1) shall be fined \$50 for the first offense,

\$75 for the second offense, and \$100 for the third and each subsequent offense.

15-70-124. Agreements with other governmental entities relating to collection of certain fuel taxes.

(1) The department of transportation may enter into agreements relating to the administration and taxation of gasoline, special fuels, and liquefied petroleum gas with state agencies of this state and other states, agencies of the federal government, and agencies of foreign governments and provinces.

(2) The agreements may cover audits, exchange of information, licensure of sellers and users, distribution, and other matters that the department considers necessary for the administration of the taxation of gasoline, special fuels, and liquefied petroleum gas. In an agreement, the department may not delegate powers to another governmental entity that involve levying fines, forfeitures, or penalties or that allow the other governmental entity to revoke or otherwise impair a license or permit issued by the department.

15-70-125. Highway nonrestricted account.

There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501, be placed in the highway nonrestricted account. Beginning July 1, 2001, all interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account.

Part 2. Basic Gasoline License Tax

15-70-201. (Temporary) Definitions.

As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person who earns income while engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States internal revenue service.

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) "Distributed" means the time that gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state for:

- (i) gasoline that is refined, produced, manufactured, or compounded in this state and placed in tanks;
- (ii) gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks;
- (iii) gasoline imported into this state and placed in storage at refineries or pipeline terminals.

(b) When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(c) For gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, the gasoline is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

- (e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or
- (f) a person in Montana who blends alcohol with gasoline.
- (7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.
- (8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.
- (9) (a) "Gasoline" includes:
 - (i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and
 - (ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.
- (b) Gasoline does not include special fuels as defined in 15-70-301.
- (10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.
- (11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.
- (12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:
 - (a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or
 - (b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.
- (13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.
- (14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.
- (15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state.

15-70-201. (Effective on occurrence of contingency) Definitions.

- (9) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".
 - (10) (a) "Gasoline" includes:
 - (i) all petroleum products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and
 - (ii) except for alcohol blended into gasohol, any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.
 - (b) Gasoline does not include special fuels as defined in 15-70-301.
- (Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)*

15-70-201. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions.

15-70-202. (Temporary) License and security of gasoline distributors -- denial or revocation of license.

- (1) (a) Each gasoline distributor, including an exporter and importer, as those terms are defined in 15-70-201, prior to the commencement of doing business, shall file:
 - (i) an application for a license with the department on forms prescribed and furnished by the department setting forth the information that may be requested by the department; and
 - (ii) security with the department in an amount to be determined by the department.
- (b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of gasoline taxes that the distributor will pay to this state each month.
- (ii) The minimum required security for a distributor who imports or exports gasoline, or both, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) The department may deny the issuance of a gasoline distributor license or revoke a gasoline distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the gasoline license tax.

(3) If an application for a gasoline distributor license is denied or revoked, the applicant or distributor has the right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) As used in this section "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under the conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(5) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) The owner of a commercial motor vehicle that is engaged in transporting fuel for a distributor is not subject to the provisions of this section.

15-70-202. (Effective on occurrence of contingency) License and security of gasoline distributors -- denial or revocation of license.

(7) A distributor who blends gasohol must be licensed with the department. If a distributor cannot be licensed, the distributor is required to buy preblended gasohol. (*Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.*)

15-70-202. (Effective July 1 of fourth year following date of occurrence of contingency) License and security of gasoline distributors -- denial or revocation of license.

15-70-203. Repealed.

15-70-204. (Temporary) Gasoline license tax -- rate.

(1) Each distributor shall pay to the department a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 4 cents for each gallon of aviation fuel, other than fuel sold to the federal defense fuel supply center, which is allocated to the department as provided by 67-1-301; and

(b) 27 cents for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).

15-70-204. (Effective on occurrence of contingency) Gasoline license tax -- rate.

- (3) Gasohol, as defined in 15-70-201, is subject to 85% of the tax imposed in subsection (1)(b).

15-70-204. (Effective July 1 of fourth year following date of occurrence of contingency) Gasoline license tax -- rate.**15-70-205. Distributor's statement and payment -- confidentiality.**

(1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render a true signed statement to the department of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 4-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section does not prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or must be in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

15-70-206. Recordkeeping requirements.

Each distributor or any other person dealing in, transporting, receiving, or storing gasoline shall keep for a period not to exceed 3 years such records, receipts, and invoices and any other pertinent papers and information as the department of transportation may require.

15-70-207. Invoice of distributors and aviation dealers.

Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the department of transportation, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the department may require.

15-70-208. Examination of records.

(1) The department of transportation or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all license taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any

person dealing in, transporting, or storing gasoline must be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

15-70-209. Information reports -- confidentiality.

(1) A person receiving gasoline, including each exporter, importer, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of \$100 for each failure or refusal. If a person establishes to the satisfaction of the department that the failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or a representative of the officer only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

15-70-210. Tax penalty for delinquency.

(1) Any license tax not paid within the time provided in 15-70-113(3) and 15-70-205 is delinquent, a penalty of 10% must be added to the tax, and the tax bears interest at the rate of 1% a month, prorated daily, from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department may waive any penalty.

(2) If a distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information that it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of \$100 or 10% of the amount due, whichever is greater, together with interest at the rate of 1% a month, prorated daily, from the date that the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.

15-70-211. Warrant for distraint.

If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. No action may be maintained to enjoin the collection of all or any part of the license tax.

15-70-212. Statute of limitations.

Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

15-70-213 through 15-70-220 reserved.**15-70-221. Refund or credit authorized.**

(1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating stationary gasoline engines used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid erroneously.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund must be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

15-70-222. Required records.

1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and for nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which the gasoline was used. Gasoline on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Special storage facilities used for certain periods must be identified and explained. If special storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into special storage.

(3) Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for their own use upon which a refund is to be claimed.

(4) When no highway use of gasoline is deducted from the claim, the applicant shall substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of transportation.

(5) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim a refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

- (a) the total number of miles traveled on and off public roads by each licensed vehicle;
- (b) total gallons of gasoline used in each vehicle;
- (c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources.

(6) An exporter or any other person who transports gasoline out of Montana for sale, use, or consumption outside of Montana shall maintain detailed and contemporaneous records of withdrawal, transportation, ownership, and delivery of the gasoline to destinations outside of Montana as required by the department of transportation.

15-70-223. Estimate allowed for agricultural use -- seller's signed statement acceptable on keylock or cardtrol purchases.

(1) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use. To ensure that the applicant's use qualifies as agricultural use, the department of transportation may request from the department of revenue information on the ratio of the applicant's gross earned farm income to total gross earned income, excluding unearned income, provided that the department of transportation gives notice to the applicant.

(2) For purposes of application for a refund under subsection (1), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline with applicable tax that identifies the purchaser and that is signed by a licensed distributor.

(3) An applicant may apply for a refund of the applicable tax on gallons of gasoline as evidenced by bulk delivery invoices or by evidence of keylock or cardtrol purchases according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

- (a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the gasoline tax;
- (b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the gasoline tax;
- (c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the gasoline tax;
- (d) if the ratio is less than 30%, the applicant is not eligible for a refund of the gasoline tax under this section.

(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(5) If an invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(6) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-222.

15-70-224. Determination of highway use.

Highway use for each vehicle is determined by dividing the average miles per gallon rate into the number of miles traveled on public roads. When records are not available, an average of 4 miles per gallon or other methods that have been found acceptable may be used by the department to determine fuel use.

15-70-225. Application for refund or credit -- filing -- correction by department.

(1) (a) Except as provided in subsection (1)(b), the application for refund is a signed statement, on a form furnished by the department of transportation. Except for a claim for a credit of taxes paid on unpaid accounts or a claim for a refund filed electronically, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased or aviation fuel purchased by a certified scheduled passenger air carrier, the total amount of gasoline or aviation fuel on which a refund is claimed, and the amount of the tax claimed for refund.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining the records upon which the claim for a refund is based.

(2) A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be

accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(3) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(4) All applications for refunds must be filed with the department within 36 months after the date on which the gasoline or aviation fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(5) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

15-70-226. Approval or rejection of claim.

(1) The department has 120 working days after receiving the claim to approve or reject it. If approved, the department of transportation shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor. For all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed 1 year.

15-70-227 through 15-70-230 reserved.

15-70-231. Unlawful use of aviation fuel.

It is unlawful for any person to use aviation fuel or to sell aviation fuel for use in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section is a misdemeanor subject to the penalties provided in 15-70-232.

15-70-232. Penalties.

Any distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided or who shall be delinquent in the payment of any license tax imposed by this part or who shall make any false statement with reference to his business or who shall make any false statement on any claim for refund or who violates any provision of the part shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding \$1,000 or imprisoned in the county jail for not to exceed 6 months or shall be punished by the imposition of both such fine and imprisonment.

15-70-233. Improperly imported fuel -- seizure.

(1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation appointed as a peace officer under 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's

designee before seizing fuel.

(4) Upon seizing the fuel the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70.

15-70-234. Cooperative agreement -- motor fuels taxes.

In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department and an Indian tribe may enter into a cooperative agreement. The department may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department of transportation shall report the status of cooperative agreement negotiations to the revenue and transportation interim committee. After negotiations are complete and if the legislature is not in session, the agreement must be presented to the committee for review and comment before the final agreement is submitted to the attorney general for approval pursuant to 18-11-105.

15-70-235. Tribal motor fuels administration account.

(1) There is a special revenue account called the tribal motor fuels administration account.

(2) The administrative expenses and refund amounts deducted by the department of transportation under an agreement must be deposited in the tribal motor fuels administration account.

(3) The tribal motor fuels administration account may be expended by the department of transportation or by the department of justice only for the purposes of administering the motor fuels tax and providing refunds under an agreement.

15-70-236. Tribal motor fuels tax account.

- (1) There is a special revenue account called the tribal motor fuels tax account.
- (2) The tax collected under 15-70-234, except the administrative expenses and refund amounts deducted under an agreement, must be deposited in the tribal motor fuels tax account.
- (3) The money in the tribal motor fuels tax account must be disbursed to the tribe, as provided for in the agreement entered into pursuant to 15-70-234, on a quarterly basis.

15-70-237 through 15-70-240 reserved.**15-70-241. Terminated.****15-70-242. Civil penalty.**

The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-232.

15-70-243 and 15-70-244 reserved.**15-70-245. (Effective on occurrence of contingency) Tax label on ethanol pumps.**

A fuel pump at a retail outlet that dispenses gasohol must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the ethanol fuel reflects a 15% reduction in the amount of state taxes when compared to gasoline. The department may impose a civil penalty for failure to mark a pump that dispenses gasohol without the appropriate decal. The penalty for each violation is \$100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred. (*Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.*)

Part 3. Special Fuels Use Tax

15-70-301. (Temporary) Definitions.

As used in this part, the following definitions apply:

- (1) "Agricultural use" means use of special fuel by a person who earns income while engaging in the business of farming or ranching and who files farm or income reports for tax purposes as required by the United States internal revenue service.
- (2) "Bond" means:
 - (a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or
 - (b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.
- (3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not

mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

- (b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or
- (c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.
- (18) (a) "Special fuel user" means a person who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.
- (b) The term does not include the U.S. government, a state, a county, an incorporated city or town, or a school district of this state.
- (19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state.

15-70-301. (Effective on occurrence of contingency) Definitions.

As used in this part, the following definitions apply:

- (2) "Biodiesel" means:
 - (a) (i) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or
 - (ii) a monoalkyl ester that:
 - (A) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and
 - (B) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as adopted by the American society of testing and materials.
 - (b) Biodiesel is also known as "B-20".
- (3) "Bond" means:

15-70-301. (Effective July 1 of fourth year following date of occurrence of contingency) Definitions.**15-70-302. Special fuel user's permits required -- exceptions.**

- (1) (a) A special fuel user shall obtain a special fuel user's permit annually from the department, prior to the use of special fuel:
 - (i) for the operation of a motor vehicle or vehicles in this state in excess of 26,000 pounds gross vehicle weight or registered gross vehicle weight used in an interstate operation;
 - (ii) by a special fuel user awarded a contract in accordance with 15-70-321; or
 - (iii) in a vehicle permitted pursuant to an agreement adopted pursuant to 15-70-121.
- (b) Except as provided in subsection (3), a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by the special fuel user upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any motor carrier services division employee, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.
- (2) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits must be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require a user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.
- (3) A special fuel user need not display the original or reproduced copy of the special fuel user's permit, as required by subsection (1), if the special fuel user is registered and licensed pursuant to the International Fuel Tax Agreement, as authorized by 15-70-121, and the vehicle displays a license or decal issued pursuant to the agreement.

15-70-303. Application for permit.

(1) Application for a special fuel user's permit must be made to the department unless otherwise provided in this part.

(2) The application must be filed upon a form prepared and furnished by the department. The application must contain information the department considers necessary.

15-70-304. (Temporary) Bonding, release of surety, and additional bond.

(1) Except as provided in this section, a special fuel user's permit may not be issued to a person or continued in force unless the person has furnished a bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required of a special fuel user must be equivalent to twice the special fuel user's estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) \$5,000 for a special fuel user awarded a contract in accordance with 15-70-321; and

(b) \$500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(2), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(2) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit.

15-70-304. (Effective on occurrence of contingency) Bonding, release of surety, and additional bond.

(3) A surety on a bond furnished by a special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the special fuel user who furnished the bond, and unless the special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301(3), the department shall cancel the special fuel user's permit.

(4) The department may require a special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301(3) if, in its opinion, the security of the surety bond previously filed by the special fuel user or the market value of the properties deposited as security by the special fuel user becomes impaired or inadequate. Upon failure of the special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the permit. *(Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)*

15-70-304. (Effective July 1 of fourth year following date of occurrence of contingency) Bonding, release of surety, and additional bond.

15-70-305. Issuance of permit -- grounds for refusal -- hearing.

(1) Except as provided in subsection (3), upon receipt of the application and bond in proper form, the department shall issue to the applicant a permit to operate as a special fuel user. Each special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

(2) If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of \$100.

(3) The department may refuse to issue a special fuel user's permit to any person:

(a) who formerly held a permit that, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and the permit of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(4) Before refusal to issue a permit, the department shall grant the applicant a hearing and shall grant the applicant at least 10 days' written notice of the time and place of hearing.

(5) A special fuel user's permit is not transferable.

15-70-306. Revocation, suspension, and cancellation.

(1) The department may revoke the permit of any special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a permit, the department shall notify the permittee of its intention, by certified mail addressed to the permittee's last-known address shown in the files of the department, requiring the permittee to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the permit should not be revoked. However, at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the permit.

(2) Upon revocation of a permit by the department, the holder shall immediately surrender the permit to the department for cancellation.

15-70-307. Surrender of permit upon use discontinuance.

The department shall cancel any special fuel user permit immediately upon surrender by the holder.

15-70-308. Repealed.**15-70-309. Repealed.****15-70-310 reserved.****15-70-311. Special fuel user's temporary trip permits -- nonresident agricultural harvesting equipment special fuel permit.**

(1) Any person operating a special fuel-powered vehicle over 26,000 pounds gross vehicle weight or registered gross vehicle weight upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a special fuel user's temporary trip permit. The permits must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, is required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit must be issued by motor carrier services division employees, Montana highway patrol officers, and other enforcing agents that the

department may prescribe by order or rule.

15-70-312. Fees for temporary permits -- duration of temporary permits.

(1) Temporary special fuel permits cost \$30. The permit is valid for a period of time not to exceed 72 hours and is automatically void if the vehicle leaves the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment costs \$30 per unit for the calendar year in which the fee is collected. The permit is not transferable. A unit is defined as:

- (a) one truck suitable for hauling commodities;
- (b) one harvesting machine; and
- (c) pickup trucks and any other accessory vehicles.

(3) All fees collected must be remitted to the department or deposited directly in the state special revenue fund for the department.

15-70-313. Department to furnish forms.

Special fuel temporary permits, nonresident temporary permits, remittance forms, and any other necessary papers for the accounting and enforcement of 15-70-311 through 15-70-314 shall be furnished by the department.

15-70-314. Penalty for operation without temporary permit -- compliance bond -- policy continued.

(1) Any unlicensed user of special fuel vehicles operating within the state of Montana without making application for said temporary permit and paying the specified fee shall be guilty of committing a misdemeanor and upon conviction be fined \$50.

(2) Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the department and to be imposed at the discretion of the enforcing agency.

15-70-315. Repealed.

15-70-316. Repealed.

15-70-317 through 15-70-320 reserved.

15-70-321. (Temporary) Tax on special fuel and volatile liquids.

(1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions; and

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

- (2) The tax imposed in subsection (1) is 27 3/4 cents per gallon.

15-70-321. (Effective on occurrence of contingency) Tax on special fuel and volatile liquids.

(1) The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax, as provided in subsection (2):

(a) for each gallon of undyed special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to operate motor vehicles upon the public roads and highways of this state;

(b) for each gallon of special fuel or other volatile liquid, except liquid petroleum gas and biodiesel, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used in motor vehicles, motorized equipment, and the internal combustion of any engines, including stationary engines, used in connection with any work performed under any contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any public agencies, including federal, state, county, municipal, or other political subdivisions;

(c) for each gallon of dyed special fuel delivered into the fuel supply tank of a diesel-powered highway vehicle, regardless of weight, operating upon the public roads and highways of this state; and

(d) for each gallon of biodiesel delivered into the fuel supply tank of a highway vehicle, regardless of weight, operating upon the public roads and highways of this state.

(2) (a) The tax imposed in subsections (1)(a) through (1)(c) is 27 3/4 cents per gallon.

(b) The tax imposed in subsection (1)(d) is 85% of the amount provided for in subsection (2)(a). (*Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.*)

15-70-321. (Effective July 1 of fourth year following date of occurrence of contingency) Tax on special fuel and volatile liquids.

15-70-322. Repealed.

15-70-323. Special fuel user's records.

(1) Every special fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep records, receipts, and invoices and other pertinent papers that the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) The records, receipts, invoices, and other pertinent papers must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

15-70-324. Examination of records -- enforcement of part.

(1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and may investigate the character of the disposition that any person makes of special fuel in order to ascertain and determine whether all excise taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and must be, if requested by the department, accompanied by the special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles is prima facie evidence that all of the special fuel has been delivered by the special fuel user into the fuel supply tanks of motor vehicles and consumed in the operation of motor vehicles upon the highways unless the contrary is established by satisfactory evidence.

(4) The department may establish vehicle inspection sites and may stop, detain, and inspect vehicles. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a

fine not to exceed \$500 upon conviction for the first offense, not to exceed \$1,000 upon conviction for the second offense, and not to exceed \$2,000 for each subsequent conviction. Each refusal is a separate offense.

(5) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of Canada, forward to the officials any information that it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel user, provided the other state or states furnish like information to this state.

15-70-325. Returns.

(1) For the purpose of determining the amount of liability for special fuel tax, each special fuel user shall file with the department, on forms prescribed by the department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that the user's annual tax liability is or will be \$200 or less.

(3) The user shall make an annual report and return to the department on forms prescribed by the department, on or before January 31 of each year. If the department determines that a user filing annual returns is delinquent in making reports and payments, it shall require the person to file quarterly returns. A return, annual or quarterly, must contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of perjury. The declarations have the same force and effect as a verification. The return must show the information that the department may reasonably require for the proper administration and enforcement of this part.

(4) The special fuel user shall file the return on or before the last day of the next calendar month following the period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed 30 days.

15-70-326. (Temporary) Computation.

The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state.

15-70-326. (Effective on occurrence of contingency) Computation.

The tax imposed by this part must be computed, with respect to special fuel for which the tax has not been paid in this state and that has been consumed by the purchaser as a special fuel user, by multiplying the appropriate tax rate per gallon provided in this part by the number of gallons of the type of special fuel consumed by the special fuel user in the operation of motor vehicles on the highways of this state. (*Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.*)

15-70-326. (Effective July 1 of fourth year following date of occurrence of contingency) Computation.

15-70-327. Payment -- deductions.

The tax return must be accompanied by remittance covering the tax due under this part for the use, as defined in 15-70-301, of special fuels during the preceding period.

15-70-328. Credits.

A licensed special fuel user who has paid a special fuel tax either directly or to the vendor from whom it was purchased must receive credit in the amount of:

(1) the tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state; or

- (2) overpayment of special fuel taxes not due to the state.

15-70-329. Procedures for credits -- deadline.

(1) If a licensed special fuel user wants to receive a refund of special fuel taxes or of the temporary permit fee, the user shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under 15-70-328 must first be credited on any amounts then due and payable from the special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the user. A warrant must be drawn upon the state treasurer for the amount of the claim, and the claim must be paid in the same manner as other claims against the state are paid.

(2) In case a special fuel user fails or neglects to file a request for refund of special fuel taxes within 12 months from the date the user's special fuel license became canceled, the department is under no obligation to make a refund.

(3) A request for refund or credit under this section must be made within 3 years from the date of the payment for which a refund or credit is claimed.

15-70-330. Special fuel penalties.

(1) In the case of a special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is imposed a penalty of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. However, if any special fuel user establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) Whenever a special fuel user files a return but fails to pay in whole or in part the tax due under this part, interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full must be added to the amount due and unpaid.

(3) (a) A special fuel user may not use dyed special fuel to operate a motor vehicle upon the public roads and highways of this state unless the fuel is subject to taxation under 15-70-321(1)(b) or the use is permitted pursuant to rules adopted under subsection (3)(b). The purposeful or knowing use of dyed special fuel in a motor vehicle operating upon the public roads and highways of this state in violation of this subsection is subject to the civil penalty imposed under 15-70-372 for the first offense. A subsequent offense is a misdemeanor punishable as provided in 15-70-336. Each use is a separate offense.

(b) The department shall adopt and enforce reasonable rules for the movement of off-highway vehicles traveling from one location to another on public highways, public roads, or streets when using dyed fuel or nontaxed fuel.

(4) The operator of the vehicle is liable for the tax imposed in 15-70-321. If the operator refuses or fails to pay the tax, in whole or in part, the seller of the special fuel is jointly and severally liable for the tax imposed under 15-70-321 and for the penalties described in this section if the seller knows or has reason to know that the fuel will be used for a taxable purpose.

15-70-331. Deficiency.

If it be determined by the department that the tax reported by any special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction of a month from the date the return was due.

15-70-332. Determination if no return made.

(1) If any special fuel user, whether or not the user is licensed as a special fuel user, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the special fuel user for the period during which a return was not filed, and to the tax as determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 is presumed to be correct, and in any case in which the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

15-70-333. Fraudulent return -- penalty.

If a special fuel user files a false or fraudulent return with intent to evade the tax imposed by this part:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law; and

(2) the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 or more than \$2,000 or by imprisonment of not less than 30 days or more than 6 months, or by both fine and imprisonment.

15-70-334. Warrant for distraint.

If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed or recorded.

15-70-335. Statute of limitation.

Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed under 15-70-331 within 3 years after the 25th day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires later.

15-70-336. Criminal penalties.

(1) A person violating any provision of this part, except 15-70-311 through 15-70-314 and 15-70-321, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 or more than \$1,000 or by imprisonment for not less than 30 days or more than 6 months, or both.

(2) The fine and imprisonment provided for in this section is in addition to any other penalty imposed by any other provision of this part.

15-70-337 through 15-70-340 reserved.**15-70-341. (Temporary) License and security of special fuel distributors -- denial or revocation of license -- reissuance fee.**

(1) (a) Each special fuel distributor, including an exporter and importer, as those terms are defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) (i) Except as provided in subsection (1)(b)(ii), the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

(ii) The minimum required security for a distributor who imports or exports special fuel, or both, is \$25,000.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or revoked.

(2) The department may deny the issuance of a special fuel distributor license or revoke a special fuel distributor license if it determines that the applicant or distributor:

(a) has violated any provision of this chapter or any rule of the department relating to gasoline or special fuel, or both;

(b) fails to provide the security required by the department;

(c) has had a distributor license revoked or denied by the department or another jurisdiction within a 3-year period;

(d) is not in compliance with motor fuels laws in other jurisdictions; or

(e) fails to pay the special fuel license tax.

(3) If an application for a special fuel distributor license is denied or revoked, the applicant or distributor has the

right to appeal the department's decision pursuant to Title 2, chapter 4, part 6.

(4) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of \$100.

(5) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

(6) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(7) The owner of a commercial motor vehicle that is engaged in transporting special fuel for a distributor is not subject to the provisions of this section.

15-70-341. (Effective on occurrence of contingency) License and security of special fuel distributors -- denial or revocation of license -- reissuance fee.

(8) A distributor who blends biodiesel must be licensed with the department. If the distributor cannot be licensed, the distributor is required to buy preblended biodiesel. (*Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.*)

15-70-341. (Effective July 1 of fourth year following date of occurrence of contingency) License and security of special fuel distributors -- denial or revocation of license -- reissuance fee.

15-70-342. Repealed.

15-70-343. Special fuel license tax -- rate.

(1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if it is:

(a) dyed by injector at a refinery or terminal for off-highway use; or

(b) sold for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

15-70-344. Distributor's statement and payment -- confidentiality.

(1) Each distributor shall, not later than the 25th day of each calendar month, except as provided in 15-70-113(3), render to the department of transportation a signed statement that specifies all special fuel distributed and received by the distributor in this state during the preceding calendar month and that contains other information the department may reasonably require in order to administer the special fuel license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-343, less any refund credit issued under 15-70-356 and less 1% of the total tax that may be deducted by the distributor as an allowance for collection.

(2) A distributor engaged in or carrying on a business at more than one location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section does not prohibit:

- (a) the delivery to a distributor or a distributor's authorized representative of a certified copy of any return or report filed in connection with the distributor's tax;
- (b) the inspection by the attorney general or by another legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;
- (c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;
- (d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or
- (e) the compliance of the department with any order of a court of competent jurisdiction.

15-70-345. Recordkeeping requirements.

Each distributor or any other person dealing in, transporting, receiving, or storing special fuel shall keep for a period not to exceed 3 years the records, receipts, and invoices and any other pertinent papers and information that the department of transportation may require.

15-70-346. Terminated.**15-70-347. Terminated.****15-70-348. Invoice of distributors.**

Each distributor in this state shall at the time of delivery, except when authorized by the department of transportation, issue to the purchaser an invoice that states the number of gallons of special fuel covered by the invoice and other information the department may require.

15-70-349. Examination of records.

(1) The department or its authorized representative may examine the books, papers, records, and equipment of any special fuel distributor or any person dealing in, transporting, or storing special fuel, as defined in this part, and may investigate the character of the disposition that any person makes of the special fuel in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain the amount of license tax due.

(3) The department may physically inspect terminals, dyes, dyeing equipment, storage facilities, and downstream storage facilities. A person who purposely or knowingly refuses to permit an inspection authorized by this section is guilty of a misdemeanor punishable by a fine not to exceed \$500 upon conviction for the first offense, not to exceed \$1,000 upon conviction for the second offense, and not to exceed \$2,000 for each subsequent conviction. Each refusal is a separate offense.

15-70-350 reserved.

15-70-351. Information reports -- penalty -- confidentiality.

(1) A person receiving special fuel, including an importer, exporter, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships special fuel from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of special fuel contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor, importer, or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of \$100 for each failure or refusal.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section may not be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

15-70-352. Penalties for delinquency.

(1) Any license tax not paid within the time provided in 15-70-113(3) and 15-70-344 is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1%, prorated daily, on the tax due for each calendar month. Upon a showing of good cause by the distributor, the department may waive the penalty.

(2) If a distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of \$100 or 10% of the amount due, whichever is greater, together with an interest rate of 1% a month, prorated daily, from the date the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.

15-70-353. Fraudulent returns -- penalty.

If a special fuel distributor files a false or fraudulent return with intent to evade the tax imposed by this part, there is added to the amount of deficiency determined by the department of transportation a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law.

15-70-354. Warrant for distraint.

If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. An action may not be maintained to enjoin the collection of all or any part of the license tax.

15-70-355. Statute of limitations.

Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency must be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

15-70-356. Refund or credit authorized.

(1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines used off the public highways and streets or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel used. The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal or state income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund.

15-70-357. Improperly imported fuel -- seizure.

(1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation appointed as a peace officer under 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel the peace officer believes to be improperly imported, the peace officer may:

- (a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.
- (b) unload the fuel; and
- (c) take three samples of the fuel from the cargo tank for examination.
- (5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:
 - (a) the original owner of the fuel;
 - (b) the owner of the transportation company that conveyed the fuel; and
 - (c) any other interested party.
- (6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:
 - (a) provide the opportunity for a hearing;
 - (b) if requested, conduct the hearing within 5 days after receiving the claim;
 - (c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and
 - (d) mail notice of the department's determination to interested parties.
- (7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:
 - (i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or
 - (ii) use the forfeited fuel for a public purpose determined by the department.
- (b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.
- (c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:
 - (i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and
 - (ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.
- (8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:
 - (a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or
 - (b) return the fuel.
- (9) A person forfeits the interest, right, and title to improperly imported fuel if the person:
 - (a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or
 - (b) is determined to be guilty of violating fuel tax laws.
- (10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70.

15-70-358 through 15-70-360 reserved.

15-70-361. Required records.

- (1) Except as provided in subsection (5), special fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.
- (2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of special fuel for which a refund is to be claimed.
- (3) When a highway use of special fuel is not deducted from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.
- (4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:
 - (a) the total number of miles traveled on and off public roads by each licensed vehicle;
 - (b) the total number of gallons of special fuel used in each vehicle; and
 - (c) purchase invoices supporting all special fuel handled through bulk storage.
- (5) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or

school district of this state is not required to keep dispersal records in order to claim a refund of special fuel taxes.

(6) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

15-70-362. Estimate allowed for agricultural use -- seller's signed statement acceptable on keylock or cardtroll purchases.

(1) An applicant whose use qualifies as agricultural use may apply for a refund of the applicable tax on the gallons of special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtroll purchases as an estimate of off-roadway use.

(2) An applicant may apply for a refund of the applicable tax on gallons of special fuel as evidenced by bulk delivery invoices or by evidence of keylock or cardtroll purchases according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

- (a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the special fuel tax;
- (b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the special fuel tax;
- (c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the special fuel tax;
- (d) if the ratio is less than 30%, the applicant is not eligible for a refund of the special fuel tax under this section.

(3) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

(4) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence that may be required by the department of transportation.

(5) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-361.

15-70-363. Determination of highway use.

Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads. When records are not available, an average of 4 miles per gallon or other methods that have been found acceptable may be used by the department to determine fuel use.

15-70-364. Application for refund or credit -- filing -- correction by department.

(1) (a) Except as provided in subsection (1)(b), the application for a refund must be a signed statement on a form furnished by the department. Except for a claim for a credit for taxes paid on unpaid accounts or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state or except for a claim for a refund filed electronically, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(b) A claim for a refund that is filed electronically in the manner specified by the department does not require a signature or the original invoices.

(c) A claim for a refund that is filed electronically does not relieve the taxpayer of maintaining records upon which the claim for a refund is based.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 36 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

15-70-365. Approval or rejection of claim.

(1) The department of transportation has 120 working days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend the claimant's right to refund for a period not to exceed 1 year.

15-70-366. Penalties.

A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any license tax imposed by this part, who makes any false statement with reference to the distributor's business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.

15-70-367 through 15-70-369 reserved.**15-70-370. (Effective on occurrence of contingency) Tax label on biodiesel pumps.**

A fuel pump at a retail outlet that dispenses biodiesel must have a decal designed and produced by the department. The department shall provide the decals, which must be affixed to both sides of the fuel pump and state that the price of the biodiesel fuel reflects a 15% reduction in the amount of state taxes when compared to special fuels. The department may impose a civil penalty for failure to mark a pump that dispenses biodiesel without the appropriate decal. The penalty for each violation is \$100 for each fuel pump. The department shall give notice of a violation and, if requested, hold a hearing pursuant to Title 2, chapter 4, part 6, to determine whether a violation occurred. *(Terminates June 30 of fourth year following date of occurrence of contingency--sec. 13, Ch. 568, L. 2001.)*

15-70-371. Marking of dyed diesel fuel pumps.

(1) A fuel pump at a retail motor fuel outlet that dispenses nontaxed dyed special fuel for off-road use must be identified by a decal designed by the department and affixed to each side of the fuel pump so as to be easily identified and read by any person operating the fuel pump.

(2) The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty for failure to mark a dyed fuel pump with the appropriate decal. The penalty for each violation is \$100 for each fuel pump.

15-70-372. Civil penalty.

The department may, after giving notice and holding a hearing, if requested, pursuant to Title 2, chapter 4, part 6, impose a civil penalty not to exceed \$100 for any violation of this part. The civil penalty may be in addition to the criminal penalties imposed under 15-70-330, 15-70-336, and 15-70-366.

Part 4 reserved

Part 5. Alcohol Tax Incentive and Administration

15-70-501. Short title.

This part may be cited as the "Alcohol Tax Incentive and Administration Act of 1983".

15-70-502. Purpose.

The purpose of this part is to establish schedules for the tax incentive for the production of alcohol to be blended for gasohol and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of alcohol fuel production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana.

15-70-503. Definitions.

As used in this part, the definitions in 15-70-201 and the following definitions apply:

- (1) "Alcohol distributor" means any person who, for the purpose of making gasohol, engages in the business of producing alcohol for sale, use, or distribution.
- (2) "Department" means the department of transportation.
- (3) "Export" means to transport out of Montana from any point of origin within Montana by any means other than in the fuel supply tank of a motor vehicle.
- (4) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state.

15-70-504 through 15-70-510 reserved.

15-70-511. Licensing of alcohol distributors.

Every alcohol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth such information as may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled.

15-70-512. Distributor's statement.

Each alcohol distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by him, that includes the following:

- (1) the number of gallons of alcohol manufactured or imported by the distributor during the preceding calendar month;
- (2) the name of each gasohol dealer to whom he sold alcohol and the number of gallons sold to each dealer; and
- (3) such other information as the department may reasonably require to administer the tax laws of this state.

15-70-513. Recordkeeping requirements.

The records of each alcohol distributor and gasohol dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and such other information as the department may require.

15-70-514. Examination of records.

The department or its authorized representative may examine the books, papers, records, and equipment of any alcohol distributor or gasohol dealer.

15-70-515 through 15-70-520 reserved.**15-70-521. Denaturing alcohol -- refund authorized.**

Any alcohol distributor who, for the purpose of denaturing alcohol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used.

15-70-522. Tax incentive for production of alcohol -- written plan required -- reservation of incentives -- rules.

(1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

- (i) is to be blended with gasoline for sale as gasohol in Montana;
- (ii) was exported from Montana to be blended with gasoline for sale as gasohol; or
- (iii) is to be used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is 30 cents a gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive for each gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol. Beginning July 1, 2010, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed \$6 million in any consecutive 12-month period.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed \$3 million in any consecutive 12-month period.

(5) An alcohol distributor may not receive tax incentive payments under subsection (2) unless the distributor has provided a written business plan to the department of transportation at least 24 months before the distributor's anticipated collection of the tax incentives and has complied with the schedule provided for in subsection (6). The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol for use in gasohol;

(b) the anticipated source of agricultural products used in the production of alcohol for use in gasohol; and

(c) the anticipated time, quantity, and duration of production of alcohol for use in gasohol.

(6) An applicant that has provided the department with a written business plan shall meet the following schedule to be able to receive alcohol tax incentive payments:

(a) start building construction or remodeling within 24 months of the date on which the department received the business plan;;

(b) complete 50% of construction or remodeling of a production facility within 36 months of the date on which the business plan was received; and

(c) complete 100% of construction or remodeling of a production facility within 48 months of the date on which the business plan was received.

(7) If the applicant does not adhere to the schedule in subsection (6), the applicant loses its priority of receiving incentive payments.

(8) After the department has verified production, the department shall begin payments of the alcohol tax incentives based on actual production according to the terms of subsection (2).

(9) The department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production.

(10) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (9).

(11) The department shall prescribe rules necessary to carry out the provisions of this section.

15-70-523. Application for payment of tax incentive.

(1) The claimant shall apply for payment of tax incentive by signed statement, on a form furnished by the department. The form must be accompanied by:

(a) the original production records and invoices issued to the gasohol dealer at the time of sale and delivery, showing total gallons of alcohol sold; and

(b) a certificate of blending issued by the alcohol purchaser showing the total gallons of alcohol blended and the date of blending.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made.

15-70-524 through 15-70-526 reserved.

15-70-527. Penalty for failure to file.

Any alcohol distributor who fails to obtain a license under 15-70-511 or to file the statements required by 15-70-512 in the manner or within the time provided in 15-70-512 or who makes any false statement is guilty of a misdemeanor and upon conviction must be fined not more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both.

Part 6 reserved

Part 7. Compressed Natural Gas Tax

15-70-701. Definitions.

As used in this part, the following definitions apply:

(1) "Bond" means:

(a) a bond executed by a compressed natural gas dealer or a liquefied petroleum gas dealer as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the compressed natural gas dealer or the liquefied petroleum gas dealer arising out of this part; or

(b) a deposit with the department by the compressed natural gas dealer or the liquefied petroleum gas dealer, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure and up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles operated on the public roads and highways of this state.

(3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

(4) "Department" means the department of transportation.

(5) "Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:

(a) propane;

(b) propylene;

(c) butane, including normal butane or isobutane; or

(d) butylene.

(6) "Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied petroleum gas into the fuel supply tank or tanks of a motor vehicle.

(7) "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas or by liquefied petroleum gas and that is driven upon the public roads and highways of this state.

(8) (a) "Person" means a person, firm, association, joint-stock company, syndicate, partnership, or corporation.

(b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, person means the partners or members of a firm, association, syndicate, or partnership. As applied to a joint-stock company or corporation, the term means the officers of the joint-stock company or corporation.

(9) "Public roads and highways of this state" means all streets, roads, highways, and related structures that are:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 60, chapter 4, or Title 70, chapter 30; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

15-70-702. Compressed natural gas dealer's or liquefied petroleum gas dealer's license.

A person may not act as a compressed natural gas dealer or as a liquefied petroleum gas dealer in this state unless the person holds a valid compressed natural gas dealer's license or a valid liquefied petroleum gas dealer's license issued by the department.

15-70-703. Application for license.

An application for a compressed natural gas dealer's license or a liquefied petroleum gas dealer's license must be filed on a form prescribed by the department. The application must contain information that the department considers necessary.

15-70-704. Bonding, release of surety, and additional bond.

(1) Except as provided in this section, a compressed natural gas dealer's license or a liquefied petroleum gas dealer's license may not be issued to a person and may not be continued in force unless the person has furnished a bond, in a form prescribed by the department, to secure the dealer's compliance with this part and has paid all taxes, interest, and penalties due under this part. The department shall waive the bond requirement of a compressed natural gas dealer or a liquefied petroleum gas dealer who is not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required must be equivalent to twice the compressed natural gas dealer's or the liquefied petroleum gas dealer's estimated quarterly tax payments but may not be less than \$1,000 for any compressed natural gas dealer or liquefied petroleum gas dealer who:

(a) requests a compressed natural gas dealer's or a liquefied petroleum gas dealer's license to be reissued after the license was canceled for cause; or

(b) fails to file timely reports and pay the tax due as required by 15-70-714.

(3) A surety on a bond furnished as provided in this section must be released and discharged from any liability to the state accruing on the bond after 30 days from the date when the surety has provided to the department a written request to be released and discharged. However, this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. Upon receiving a release request, the department shall promptly notify the compressed natural gas dealer or the liquefied petroleum gas dealer who furnished the bond, and unless the dealer, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as described in 15-70-701(1)(b), the department shall cancel the dealer's license.

(4) The department may require a compressed natural gas dealer or a liquefied petroleum gas dealer to give a new or additional surety bond or to deposit additional securities pursuant to 15-70-701(1)(b) if the department determines that the security of the surety bond previously filed by the dealer or the market value of the property deposited as security by the dealer is impaired or inadequate. If the compressed natural gas dealer or the liquefied petroleum gas dealer fails to give an additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the dealer's license.

15-70-705. Issuance of license -- grounds for refusal -- hearing.

(1) Except as provided in subsection (2), upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a compressed natural gas dealer or as a liquefied petroleum gas dealer. A license is valid until suspended, revoked for cause, or otherwise canceled.

(2) The department may refuse to issue a compressed natural gas dealer's license or a liquefied petroleum gas dealer's license to any person:

(a) who formerly held a license that, prior to the time of filing the application, has been revoked for cause;

(b) who is not the real party in interest, and the license of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

(3) Before refusing to issue a license, the department shall grant the applicant a hearing and shall provide the dealer with at least 10 days' written notice of the time and place of hearing.

(4) A compressed natural gas dealer's license or a liquefied petroleum gas dealer's license is not transferable.

15-70-706. Revocation of license -- notice.

(1) The department may revoke the license of any compressed natural gas dealer or liquefied petroleum gas dealer for reasonable cause. Before revoking a license, the department shall notify the licensee of the department's intent to revoke the license. The notice must be made by certified mail addressed to the licensee's last-known address shown in the files of the department. The notice must include a statement that the licensee has the right to appear before the department at a time specified in the notice and to show cause, if any, why the license should not be revoked. The time specified by the department may not be more than 30 days or less than 10 days from the date of the notice. At any time prior to and during the hearing, the department may in the exercise of reasonable discretion suspend the license.

(2) Upon revocation of a license, the licensee shall immediately surrender the license to the department for cancellation.

15-70-707. Cancellation of license upon surrender.

The department shall cancel a license to act as a compressed natural gas dealer or as a liquefied petroleum gas dealer immediately upon surrender of the license by the licensee.

15-70-708 through 15-70-710 reserved.**15-70-711. Tax on compressed natural gas -- tax on liquefied petroleum gas.**

(1) Each compressed natural gas dealer shall collect the tax on compressed natural gas from the user at the time that the compressed natural gas is placed into the supply tank of a motor vehicle.

(2) (a) The total tax due on compressed natural gas is computed according to the formula provided in subsection

(2)(b).

(b) $T = (R/V) \times TV$, where:

(i) T is the total tax due;

(ii) R is 7 cents;

(iii) V is 120 cubic feet of compressed natural gas at 14.73 pounds per square inch absolute base pressure; and

(iv) TV is the total volume of compressed natural gas placed into the supply tank of a motor vehicle.

(3) The compressed natural gas dealer shall pay the tax to the department as provided in 15-70-714.

(4) Each liquefied petroleum gas dealer shall collect the tax on liquefied petroleum gas from the user at the time that the liquefied petroleum gas is placed into the supply tank of a motor vehicle.

(5) (a) The total tax due on liquefied petroleum gas is computed according to the formula provided in subsection

(5)(b).

(b) $T = (C/G) \times TG$, where:

(i) T is the total tax due;

(ii) C is 5.18 cents;

(iii) G is 1 gallon of liquefied petroleum gas; and

- (iv) TG is the total gallons of liquefied petroleum gas placed into the supply tank of a motor vehicle.
- (6) The liquefied petroleum gas dealer shall pay the tax to the department as provided in 15-70-714.
- (7) The United States, the state of Montana, and any political subdivision of this state are exempt from the levy and imposition of this tax.

15-70-712. Recordkeeping.

- (1) Each compressed natural gas dealer, each liquefied petroleum gas dealer, and each person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas or liquefied petroleum gas in this state shall keep all records, receipts, invoices, and other pertinent documents that the department may require and shall produce them for the inspection of the department at any time during regular business hours.
- (2) The records, receipts, invoices, and other pertinent documents must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made.

15-70-713. Examination of records -- enforcement -- reciprocity.

- (1) The department shall enforce the provisions of this part.
- (2) The department or its authorized representative may examine the records, receipts, invoices, documents, and equipment of any compressed natural gas dealer, any liquefied petroleum gas dealer, or any person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas or liquefied petroleum gas and may investigate the character of the disposition that any person makes of compressed natural gas or liquefied petroleum gas in order to determine whether all taxes due under this part are being properly reported and paid. If the records, receipts, invoices, documents, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department or at the business location of the dealer or other person and must, if requested by the department, be accompanied by the dealer or other person.
- (3) The department shall, upon request from an official who is responsible for the enforcement of the compressed natural gas tax law or the liquefied petroleum gas tax law of any other state, the District of Columbia, the United States, a territory or possession of the United States, or a province of Canada, forward to the official any information that it has relative to the receipt, storage, delivery, sale, use, or other disposition of compressed natural gas or liquefied petroleum gas by any compressed natural gas dealer or liquefied petroleum gas dealer if the other governmental entity furnishes similar information to the department.

15-70-714. Returns required -- payment.

- (1) For the purpose of determining the amount of liability for the tax due under this part, a compressed natural gas dealer and a liquefied petroleum gas dealer shall file with the department a quarterly tax return on forms prescribed by the department.
- (2) The dealer shall file the return on or before the last day of the next calendar month following the quarter to which it relates. For good cause, the department may grant a taxpayer a reasonable extension of time for filing, but the extension may not exceed 30 days.
- (3) The tax return must be accompanied by payment of the amount of tax due under 15-70-711 for compressed natural gas or liquefied petroleum gas sold during the preceding quarter.

15-70-715. Penalties for refusal or failure to file return or pay tax when due.

- (1) If a compressed natural gas dealer or a liquefied petroleum gas dealer refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-714, there is imposed a penalty of \$25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction of a month during which the refusal or failure continues. If a compressed natural gas dealer or a liquefied petroleum gas dealer establishes to the satisfaction of the department that the failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty imposed by this section.
- (2) Whenever a compressed natural gas dealer or a liquefied petroleum gas dealer files a return but fails to pay in whole or in part the tax due under this part, there must be added to the unpaid amount due interest at the rate of 1% a month or fraction of a month from the date on which the tax was due to the date of payment in full.

15-70-716. Deficiency -- penalty.

If the department determines that the tax reported by a compressed natural gas dealer or a liquefied petroleum gas dealer is deficient, the department shall assess the deficiency on the basis of information available to the department. There must be added to the deficiency interest on the deficient amount at the rate of 1% a month or fraction of a month from the date on which the return was due.

15-70-717. Determination if no return made -- penalty -- presumption.

(1) If a compressed natural gas dealer or a liquefied petroleum gas dealer, whether or not the dealer is licensed, fails, neglects, or refuses to file a compressed natural gas tax return or a liquefied petroleum gas tax return when due, the department shall, on the basis of information available to the department, determine the tax liability of the compressed natural gas dealer or the liquefied petroleum gas dealer for the period during which a return was not filed and add to the tax determined the penalty and interest provided for in 15-70-715.

(2) An assessment made by the department pursuant to 15-70-715, 15-70-716, or this section is presumed to be correct. Whenever the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a preponderance of the evidence that it is erroneous or excessive.

15-70-718. Fraudulent return -- penalty.

If a compressed natural gas dealer or a liquefied petroleum gas dealer files a fraudulent return with intent to evade the tax imposed by this part:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at the rate of 1% a month or fraction of a month on the deficiency from the date on which the tax was due to the date of payment. The penalty and interest are in addition to all other penalties prescribed by law.

(2) the person is guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than \$100 or more than \$2,000 or imprisonment of not less than 30 days or more than 6 months, or both.

15-70-719. Warrant for distraint.

If all or part of the tax imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the lien is filed by the department. An action may not be maintained to enjoin the collection of all or any part of the license tax.

15-70-720. Statute of limitations.

Except in the case of a fraudulent return or of neglect or refusal to make a return, a deficiency must be assessed within 3 years from the due date of the return or the date of filing the return.

Chapter 11. State-Tribal Cooperative Agreements

Part 1. General Provisions

18-11-101. Short title -- purpose.

- (1) This chapter shall be known and may be cited as the "State-Tribal Cooperative Agreements Act".
- (2) It is the intent of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.
- (3) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

18-11-102. Definitions.

As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.
- (2) "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

18-11-103. Authorization to enter agreement -- general contents.

- (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:
 - (a) perform any administrative service, activity, or undertaking that a public agency or a tribal government entering into the contract is authorized by law to perform; and
 - (b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.
- (2) The agreement must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the governor or the governor's designee is the governing body.
- (3) The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.
- (4) (a) Prior to entering into an agreement on taxation with a tribal government, a public agency shall provide public notice and hold a public meeting on the reservation whose government is a party to the proposed agreement for the purpose of receiving comments from and providing written and other information to interested persons with respect to the proposed agreement.
 - (b) At least 14 days but not more than 30 days prior to the date scheduled for the public meeting, a notice of the proposed agreement and public meeting must be published in a newspaper of general circulation in the county or counties in which the reservation is located.
 - (c) At the time the notice of the meeting is published, a synopsis of the proposed agreement must be made available to interested persons.

18-11-104. Detailed contents of agreement.

- (1) The agreement authorized by 18-11-103 must specify the following:
 - (a) its duration;
 - (b) the precise organization, composition, and nature of any separate legal entity created by the agreement;
 - (c) the purpose of the agreement;
 - (d) the manner of financing the agreement and establishing and maintaining a budget for the agreement;
 - (e) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination;
 - (f) provision for administering the agreement, which may include creation of a joint board responsible for

administration;

- (g) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and
- (h) other necessary and proper matters.

(2) If an agreement involves law enforcement, it must also include:

- (a) the minimum training standards and qualifications of law enforcement personnel;
- (b) the respective liability of each public agency and tribal government for the actions of law enforcement officers

when acting under the provisions of an agreement;

- (c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement.

(3) If an agreement involves the assessment and collection or refund of a similar tax or license or permit fee by the state or a public agency and a tribal government, it must also include:

(a) the procedure for determining the amount of revenue to be shared by the state or a public agency and the tribal government;

- (b) the administrative procedures for collection of the shared revenue;

- (c) the minimum insurance or bonding, if any, required by the state or a public agency or the tribal government;

(d) a statement specifying the administrative expenses, if any, to be deducted pursuant to 18-11-112 by the collector of the tax or license or permit fee;

(e) a statement that the state or a public agency or the tribal government collecting the tax or license or permit fee is subject to an audit report by a mutually agreed upon auditor of the revenue collected and administrative expenses;

(f) a statement that the state or a public agency and the tribal government will cooperate to collect only one tax and will share or refund the revenue as specified in the agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.

18-11-105. Submission of agreement to attorney general.

(1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this chapter unless he finds it is not in proper form or does not meet the requirements set forth in this chapter or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for his disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission to him, it shall be considered approved by him.

18-11-106. Repealed.

18-11-107. Filing of agreement.

(1) Within 60 days after approval by the attorney general and signature of the parties, an agreement made pursuant to this chapter must be filed with:

(a) the regional office of the bureau of Indian affairs of the United States department of the interior having trust responsibility for the tribe that is party to the agreement or its successor agency;

(b) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located, except as provided in (2) of this section;

- (c) the secretary of state; and

- (d) the affected tribal government.

(2) If a party to the agreement is a state agency, the agreement need not be filed with the county clerk and recorder for Lewis and Clark County.

18-11-108. Revocation of agreement.

An agreement made pursuant to this chapter is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

18-11-109. Authorization to appropriate funds for purpose of agreement.

Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

18-11-110. Specific limitations on agreements.

Nothing in this chapter may be construed to authorize an agreement that:

(1) is not permitted by federal law. However, the parties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to affect the underlying jurisdictional authority of any party unless expressly authorized by congress.

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; or

(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.

18-11-111. Repealed.**18-11-112. Revenue account -- administrative account -- distribution of revenue.**

(1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, if any, deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) Administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for administrative expenses, if any, deducted under subsection (2), revenue collected by a public agency under a state-tribal agreement must be deposited in separate special revenue accounts and must be disbursed as provided for in the agreement. If a public agency that is a party to an agreement is a local government, the agreement must provide for the disposition of revenue.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, public agency ordinance, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, public agency, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

Administrative Rules of Montana

**ARM Title 18; Chapter 9
Motor Fuels – Gasoline Tax**

**ARM Title 18; Chapter 10
Motor Fuels Tax Division – Other Fuels**

**ARM Title 18; Chapter 11
Motor Fuels – Seizure**

As of: October 2001

**Prepared by:
Montana Department of Transportation**

ARM Title 18; Chapter 9 – Motor Fuels – Gasoline Tax

Sub-Chapter 1 - Gasoline Distributor's License Tax

18.9.101 Determination Of When Gasoline, Special Fuel, Or Aviation Fuel Distributed

(1) When gasoline, special fuel, or aviation fuel is withdrawn from a refinery or pipeline terminal in this state, the gasoline, special fuel, or aviation fuel shall be deemed to be distributed by the distributor who is the owner of the gasoline, special fuel, or aviation fuel prior to the time of withdrawal, unless:

- (a) the gasoline, special fuel, or aviation fuel is withdrawn for shipment or delivery to a licensed distributor, in which case it shall be deemed distributed by the shipping or delivering distributor; or
- (b) the gasoline, special fuel, or aviation fuel is withdrawn for shipment or delivery to a person not licensed as a distributor for the account of a licensed distributor, in which case it shall be deemed distributed by the distributor for whose account the shipment or delivery is made.

(2) The gasoline, special fuel, or aviation fuel imported into this state (other than gasoline, special fuel, or aviation fuel placed in storage at refineries or pipeline terminals) shall be deemed to be distributed after it has arrived in and is brought to rest in this state by the person who is the owner of the gasoline, special fuel, or aviation fuel at the time the gasoline, special fuel, or aviation fuel is unloaded. However, if the owner is not licensed as a Montana distributor and if the gasoline, special fuel, or aviation fuel was shipped or delivered into this state by a person who is licensed as a distributor, then the gasoline, special fuel, or aviation fuel shall be deemed to be distributed by the licensed distributor.

(3) Deliveries of gasoline, special fuel, or aviation fuel to a distributor's own service station(s) or to any aviation dealer's storage tank(s) shall be treated as being sold and shall be deemed to be distributed.

(4) Withdrawals from a refinery, terminal or pipeline terminal, which are placed into bulk storage in this state, are deemed to be distributed at the time of delivery into the bulk storage tank.

18.9.102 Distributor's Bond

(1) Gasoline, special fuel, or aviation fuel distributors must furnish the department of transportation a corporate surety bond executed by the distributor as principal with a corporate surety authorized to transact business in this state or other collateral security or indemnity. The total amount of bond or collateral security or indemnity must be equivalent to twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax, in no case greater than \$100,000, except as provided in (3). The department will establish the bond amount on a distributor with less than 12 months prior history.

(2) The department may require a distributor to post an additional bond not to exceed twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax who has in the previous 12 month period:

- (a) been delinquent for more than 10 days for more than one reporting period;
- (b) has given the state a non-sufficient fund check and whose non-sufficient fund check was returned in result of a bank error more than twice;
- (c) whose filing was returned for inadequate postage more than twice; or
- (d) the department's review indicates that the required distributor's records are inadequate.

(3) Upon written application by a distributor and the showing of good cause, the department may, at its discretion, accept a bond, collateral security, or indemnity in an amount less than twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax if the distributor reports and pays its tax more frequently than monthly. For example, if the distributor pays his tax weekly, his bond would be the estimated weekly tax payment.

18.9.103 Distributor's Statements

(1) Every distributor must file a monthly distributor's license tax report, on a form furnished by the department within the time prescribed by 15-70-205, MCA. Supporting detail schedules on forms furnished by the department must accompany the distributor's license tax report, with all letters of explanation of credit deduction and the payment of the license tax due.

(2) Electronic filing in the format required by the department, will be accepted.

(3) Each distributor must report the amount of gasoline and special fuel distributed and received in gross gallons on the monthly tax return that is filed with the department of transportation.

18.9.104 Distributor's Records

- (1) Every distributor importing, manufacturing, refining, dealing in, transporting, or storing fuel in this state must maintain and keep records, receipts, invoices, including electronic format data, and other pertinent papers the department requires. Every distributor must provide for a period of 3 years the following:
- (a) stock summary showing the monthly totals for the gallons of all gasoline, special fuel, or aviation fuel handled within this state with an analysis as to inventories, receipts, sales, use, transfers, and shipments; and
 - (b) receipt journals, refinery production journals, sales journals, and copies of all invoices, bills of lading, or other documents of supporting information.
- (2) Every refinery and terminal in the state must submit to the department monthly a copy of each bill of lading ~~or manifest~~ issued at the time of withdrawal. The department may waive the hard copy in lieu of electronic filing format.

18.9.105 Distributor's Invoice

- (1) Except as provided in (2), any distributor who sells and delivers gasoline, special fuel, or aviation fuel in this state must issue an original invoice at the time of delivery to the purchaser. Each invoice must contain the following:
- (a) a preprinted consecutive number, except when invoices are automatically assigned a consecutive number by a computer or similar machine when issued;
 - (b) name and address of the distributor;
 - (c) name and address of purchaser;
 - (d) date of delivery;
 - (e) type of fuel;
 - (f) gallons invoiced--those common terms used or known to measure gasoline, special fuel, or aviation fuel such as temperature corrected at 60 degrees (net), and gross (cubical, volumetric, and shell);
 - (g) origin;
 - (h) destination;
 - (i) price per gallon and total amount charged;
 - (j) to establish that the tax has been charged, at least one of the following:
 - (i) the U.S. dollar amount of tax;
 - (ii) the rate of tax; or
 - (iii) a statement that the Montana tax is included in the price.
- (2) For direct shipments accounted for on the monthly distributor's statement to the department of transportation, the original invoice may be issued to the purchaser at the time of billing.

18.9.106 Invoice Error

- (1) When an original invoice is issued in error, it must be canceled by a credit invoice and cross-referenced to all copies of the invoice covering the corrected transaction. If a second invoice is issued, it must show the date and number of the original invoice and the second invoice is in replacement of the first invoice.

18.9.107 Multi-Distributor Invoice Requirements

- (1) Where a licensed distributor makes delivery to another licensed distributor's account, the invoicing requirements as provided for in ARM 18.9.105 will be accepted in lieu of the invoice requirements.

18.9.108 Wholesale Distributor

- (1) As used in these rules, the term "wholesale distributor" and "wholesale distribution" includes any person who:
- (a) purchases gasoline, special fuel, or aviation fuel and subsequently sells and delivers the gasoline, special fuel, or aviation fuel to retailers in bulk quantities in this state; and
 - (b) elects to become licensed under 15-70-201, MCA, to assume the Montana state gasoline, special fuel, or aviation fuel tax liability and the other obligations of a "distributor" pursuant to Title 15, chapter 70, parts 2 and 3, MCA, and these rules.
- (2) The terms "wholesale distributor" and "wholesale distribution" do not include any person who is a producer or importer.
- (3) The term "wholesale distribution" does not include a parent corporation or company that sells gasoline, special fuel, or aviation fuel only to its wholly owned subsidiary service stations.

18.9.109 Wholesale Distributor's Obligations

(1) A wholesale distributor must comply with all the laws, rules, and other obligations which are imposed on a "distributor" of gasoline, special fuel, or aviation fuel.

18.9.110 Wholesale Distributor's Annual License, License Fees And License Renewal (IS HEREBY REPEALED)**18.9.111 Gasohol Blenders**

(1) Pursuant to 15-70-201, MCA, a person who blends alcohol with gasoline to produce gasohol is a "distributor" if no tax has been paid on the alcohol or gasoline blended to produce gasohol. As a distributor, the gasohol blender is responsible for paying the tax on all the alcohol and gasoline which has not been taxed and which is used to produce gasohol. If the person qualifies as a distributor solely on the basis of blending alcohol and gasoline, the person is a distributor only with respect to the alcohol and gasoline used to produce gasohol.

(2) The blending of alcohol with gasoline to produce gasohol does not make the gasohol blender a distributor for the purpose of the payment of the tax due on gasoline not blended with alcohol to produce gasohol. If the gasohol blender receives gasoline upon which no tax has been paid and not used to produce gasohol, the blender must qualify as and meet all the requirements to be either a distributor under 15-70-201, MCA, or a "wholesale distributor" under 15-70-201, MCA, and pay the tax. Sections 15-70-201 and 15-70-301, MCA, are the requirements for being a distributor or wholesale distributor on a basis other than being a gasohol blender. Only if the gasohol blender qualifies under these other requirements can that blender purchase gasoline without tax for resale as gasoline.

(3) The gasohol blender must comply with all the laws and rules which apply to distributors.

18.9.112 Definitions

(1) "Bulk storage" means a container or tank holding any fuels for storage, other than the supply tank of a motor vehicle or any internal combustible engine or motor fuel placed in storage at refineries or pipeline terminals.

18.9.113 Through 18.9.115 Reserved**18.9.116 Incidence Of The Fuel Tax**

(1) The incidence of the distributor's license tax is on the distributor and not on the user. Fuel is not exempt from taxation because the ultimate user or consumer is an agency of the United States government, including the United States armed forces, Montana, or other states, counties, incorporated cities and towns, and school districts of this state, or any other entity, group, or individual.

18.9.117 Distributor - Supporting Documentation For Bad Debt Credit

(1) A credit claim for taxes paid on accounts for which the distributor received no compensation must accompany documents or copies of documents showing the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to claim shall be furnished as required by the department.

18.9.118 Prepayment Of Motor Fuel Taxes

(1) A licensed distributor may overpay its known motor fuel tax liability. The overpayment must be designated as such by the distributor. The credit balance created by the overpayment will apply to future tax deficiencies if the gasoline, special fuel, or aviation fuel is reported and tax is paid within 30 days after the due date.

Sub-Chapter 2 - Exemptions From Gasoline Distributor's License Tax

18.9.201 Intrastate Gasoline Deliveries

(1) Credit from gasoline, special fuel, or aviation fuel tax may be claimed on the statement provided for in ARM 18.9.103 for deliveries in this state to another distributor.

18.9.202 Export Deliveries

- (1) If the delivering distributor ships gasoline, special fuel, or aviation fuel to a Montana distributor at a point outside the state, the distributor may claim a credit by reason of export except as outlined in (3) below and must report the transaction the same as an export to any other customer.
- (2) If a distributor ships gasoline, special fuel, or aviation fuel to a point outside the state following receipt from another distributor in this state, the distributor receiving the fuel in this state shall be deemed the exporter. The distributor making the delivery within this state may claim credit as outlined in ARM 18.9.201.
- (3) If the delivery is placed into storage in this state and later distributed at a point outside this state, the distributor may not claim credit for the petroleum cleanup fee.

18.9.203 Import Deliveries

- (1) If a distributor ships gasoline, special fuel, or aviation fuel into Montana and delivers such fuel directly to another distributor before the fuel passes through his pipeline storage in this state, the delivering distributor must report the transaction as a receipt and may claim a credit the same as delivering distributors in ARM 18.9.201.
- (2) If distribution between distributors takes place outside the state and the receiving distributor ships the gasoline, special fuel, or aviation fuel into Montana, the receiving distributor must report the import into pipeline storage or as a direct delivery to a customer.

18.9.204 Blending Stocks

- (1) Distributors may transfer casinghead or catalytic blending stocks to other licensed distributors without the payment of tax; provided these products will be used for blending purposes only and the blended product will be distributed as gasoline.

18.9.205 Exemption - U.S. And Other States

- (1) Licensed distributors making sales of gasoline, special fuel, or aviation fuel, to the United States government or a state entity FOB rack for use by the purchaser out of the state of Montana must report the sale as a credit to the amount of gasoline, special fuel, or aviation fuel distributed on the distributor's monthly statement as an export required by 15-70-205, MCA.

18.9.206 Through 18.9.210 Reserved

18.9.211 United States Exemption Certificates (Is Hereby Repealed.)

Sub-Chapter 3 - Refunds of License Tax

18.9.301 Refund Gasoline Seller's Permit (IS HEREBY REPEALED)

18.9.302 Seller's Invoice

(1) Any person, other than a licensed distributor, who sells and delivers gasoline or special fuel to a purchaser on which a refund may be claimed must issue an original invoice at the time of delivery, showing the number of gallons delivered. Each invoice issued must be an original invoice. Only one original invoice may be issued for each delivery. In addition to these requirements outlined, each invoice must contain or show the following:

- (a) a preprinted serial number;
- (b) name and address of seller;
- (c) name and address of purchaser;
- (d) complete date of delivery;
- (e) type of fuel;
- (f) gallons invoiced;
- (g) price per gallon; and
- (h) to establish that the tax has been charged, at least one of the following:
 - (i) the U.S. dollar amount of tax;
 - (ii) the rate of tax; or
 - (iii) a statement that the Montana tax is included in the price.
- (i) identification of the equipment or bulk storage that the gasoline or special fuel is placed into if it is fueled from other than a cardlock. Examples include, but are not limited to, fuel cans, slip tanks, tractors or bobcats.

18.9.303 Filing Invoices

(1) No altered or corrected invoice will be accepted for refund purposes when errors occur. The original invoice must not be altered or corrected but must be voided and a new original invoice issued. All altered or corrected invoices must be marked void and retained by the seller for a period of at least 3 years from date issued.

(2) Each licensed seller is required to file for approval a completed sample set of invoices that will be issued covering sales to refund applicants. A sample invoice must be filed annually regardless if the invoice changed.

18.9.304 Power Take-Offs (IS HEREBY REPEALED)

18.9.305 Auxiliary Engines (IS HEREBY REPEALED)

18.9.306 Refund Percentages For Pto Or Auxiliary Engines

(1) A person who purchases and uses any gasoline or special fuel on which the Montana gasoline or special fuel tax has been paid for the operation of a power-take off unit (PTO), or auxiliary engines fueled from the same supply tank as the vehicle, may obtain a refund of the fuel tax. The applicant must maintain the following records:

- (a) The original sales receipts and bulk fuel invoices must have a preprinted number, the seller's name and address, date, number of gallons, type of fuel, price per gallon, the purchaser's name and address, and one of the following:
 - (i) dollar amount of tax;
 - (ii) rate of tax;
 - (iii) a notation that Montana tax is included in the price;
- (b) If bulk fuel is used, the customer must keep dispersal records that indicate the date of disbursement, number of gallons withdrawn and the vehicle in which the fuel was delivered. An original invoice for bulk storage must be submitted with the refund application.
- (c) Each user shall maintain mileage records to support the mileage reported traveled, both on public roads and off

public roads.

(2) The following percentages are allowed for the refund of gasoline or special fuel used in operating a PTO or auxiliary engines when the above records are maintained. The amounts are specified as a percentage of the total taxable fuel used by the vehicle. Work performed in accordance with 15-70-321, MCA, is not eligible for a refund. The percentages are:

Water and oil well drilling rigs	80%
Cement mixing/concrete pumping trucks	30%
Sanitation/garbage trucks/septic pumpers	30%
Sewer cleaning/jet vactor	30%
Super suckers	30%
Fire trucks	30%
Mobile cranes	30%
Line truck with digger/aerial lift	25%
Refrigeration trucks	25%
Sweeper trucks (must be motor vehicle)	25%
Self loaders/boom truck (i.e., logging trucks)	20%
Truck with hydraulic winch	20%
Wrecker	20%
Semi-wrecker	20%
Service truck with jack hammer/drill/crane	20%
Oil and water well service trucks	20%
Bulk feed truck	20%
Dump trailer trucks	20%
Dump trucks	20%
Hot asphalt distribution truck	20%
Leaf truck	20%
Pneumatic tank truck	20%
Salt spreader on dump truck	20%
Seeder truck	20%
Snow plow	20%
Spray truck	20%
Tank transport	20%
Tank trucks	20%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
All others, including auxiliary engines under 15 horsepower	7.5%

18.9.307 Through 18.9.310 Reserved

18.9.311 Lost Or Destroyed Gasoline, Special Fuel, Or Aviation Fuel

(1) The department of transportation reserves the right to demand from a person claiming a refund under the provisions of 15-70-221 through 15-70-226, and 15-70-356 through 15-70-365, MCA, that positive proof be submitted of the exact amount of the loss and facts indicating the gasoline, special fuel, or aviation fuel was never used on the highway or in the air. In offering this proof, the following procedures must be strictly adhered to by the person claiming the refund:

- (a) The claim for refund must accompany the original invoice covering the purchase of gasoline, special fuel, or aviation fuel.
- (b) A notarized statement citing the circumstances covering the loss and how the amount of gasoline, special fuel, or aviation fuel lost was determined.
- (c) Substantiating records must be available to reveal and account for the amount of gasoline, special fuel, or aviation fuel lost.
- (d) Affidavits from individuals witnessing or involved in the loss of gasoline, special fuel, or aviation fuel must be obtained and available to the department.

(2) The distributor may not claim a refund for the petroleum cleanup fee.

18.9.312 Gasoline, Special Fuel, Or Aviation Fuel Lost From Storage

(1) In cases where gasoline, special fuel, or aviation fuel is placed into a storage tank or similar facility and the gasoline, special fuel, or aviation fuel is lost as a result of a leak in either the tank, the line, or the pump connected to the tank or facility, the department of transportation is under no obligation to refund the tax if a taxpayer fails:

- (a) to immediately notify the department of the loss; or
- (b) to comply strictly with the procedures provided in ARM 18.9.311; or
- (c) to take the necessary precautions to repair the leak and to attempt to minimize the loss.

(2) The distributor may not claim a refund for the petroleum cleanup fee.

18.9.313 Through 18.9.320 Reserved**18.9.321 Processing Claims For Refunds**

(1) Upon receipt of an application for refund of fuel tax, the department of transportation has 120 working days after receiving the claim to approve or reject it.

(2) After approval of the claim, the department will process the refund.

(3) After rejection of the claim, the department may, after investigation, require the claimant to file an amended statement before action is taken. If the taxpayer submits an amended claim, the claim is reasonable, and the taxpayer has furnished substantial proof, the department in its discretion may accept the amended claim.

(4) A taxpayer may, of their own initiative, file an amended claim. If the claim is reasonable and the taxpayer has furnished substantial proof, the department, in its discretion, may accept the claim.

~~18.9.322~~ See 18.10.110 Off-Highway Vehicle/Equipment**~~18.9.323~~ See 18.10.111 Dyed Special Fuel Allowance****~~18.9.324~~ See 18.10.112 Dyed Special Fuel****Sub-Chapter 4 - Gasohol****18.9.401 Treatment Of Gasohol**

(1) For the purposes of Title 15, chapter 70, reference to gasoline includes, gasohol (regardless of where produced and how produced). Gasoline and gasohol are taxed at the rate specified in 15-70-204(1), MCA.

(2) This rule, as amended, is effective for taxable periods beginning on and after July 1, 1983.

18.9.402 Agricultural Products

(1) As used in the definition of gasohol (15-70-201, MCA), the term "agricultural products" includes timber.

18.9.403 Ethanol Content

(1) A product consisting of 100% anhydrous ethanol is not considered to be gasohol.

Sub-Chapter 5 - Alcohol Distributors

18.9.501 Alcohol Distributors

- (1) It is the responsibility of the alcohol distributor, including anyone who imports alcohol, to collect and remit to the department of transportation the tax that is due on the alcohol pursuant to 15-70-204(3), MCA.
- (2) This rule is effective for taxable periods beginning on and after July 1, 1983.

Sub-Chapter 6 - Alcohol Tax Incentive

18.9.601 Intent

- (1) The following rules are intended to implement the Alcohol Tax Incentive and Administration Act, Title 15, chapter 70, part 5, MCA, and are designed to facilitate the efficient payment of the alcohol tax incentive while insuring against fraud, waste, and abuse under the act.
- (2) These rules are meant to be read and administered as a whole and in conjunction with the other rules in ARM, Title 18, chapter 9.

18.9.602 Definitions

- (1) As used in this subchapter, the definitions found in ARM Title 18, chapter 9 and 15-70-503 and 15-70-201, MCA, apply.
- (2) The following definitions also apply:
 - (a) "Act" means the "Alcohol Tax Incentive and Administration Act," Title 15, chapter 70, part 5, MCA.
 - (b) "Alcohol" means anhydrous ethanol produced in Montana from Montana agricultural products, including Montana wood or wood products, or from non-Montana agricultural products when Montana products are not available.
 - (c) "Consecutive twelve months" means state fiscal year, July 1 through June 30.
 - (d) "Division" means the administration division, department of transportation.
 - (e) "Written plan" means a detailed proposed business plan providing information that allows the department to estimate the alcohol incentive tax reservation of funds.

18.9.603 Processing of the Tax Incentive Payment

- (1) The alcohol distributor shall make one application, on forms available from the administration division, for the payment of the tax incentive to the division not later than the 25th day of the calendar month following the month or months during which the alcohol was sold and delivered to the gasohol dealer or alcohol purchaser. The alcohol distributor may not submit more than one application during a month. If alcohol is omitted from one month's application, it may be applied for in the application for a subsequent month.
- (2) The application must be accompanied by the original or a copy of the production records and invoices for all the alcohol for which the alcohol distributor is applying for the tax incentive payment.
- (3) The application must contain:
 - (a) the name of the alcohol distributor;
 - (b) the license number of the alcohol distributor;
 - (c) the total number of gallons of alcohol manufactured, exported, or imported by the distributor during the preceding calendar month;
 - (d) the name of each gasohol dealer to whom the alcohol was sold;
 - (e) the gasoline distributor license number of the gasohol dealer;
 - (f) the number of gallons of alcohol sold to each dealer or purchaser; and
 - (g) the date and the place the alcohol was blended with gasoline to produce gasohol.
- (4) If the application includes alcohol which was exported from Montana prior to being blended with gasoline to produce

gasohol, the application must be accompanied by a certificate of blending from the alcohol purchaser on a form which is furnished by the division. The certificate must be completed and signed by the out-of-state alcohol purchaser and must include:

- (a) the license number or numbers, if any, of the purchaser in the state or states where the gasohol was distributed;
 - (b) the address and telephone number of the alcohol purchaser;
 - (c) the number of gallons of gasohol which were produced by the purchaser from the alcohol which was produced in Montana;
 - (d) the statement that the alcohol was blended with gasoline at a ratio of at least one gallon of alcohol to nine gallons of gasoline; and
 - (e) the name, license number, and address of the person who actually blended the alcohol with gasoline and the number of gallons of gasohol which was produced if he is not the alcohol purchaser.
- (5) The application must be sent to:
Administration Division
Department of Transportation
2701 Prospect
P.O. Box 201001
Helena, MT 59620-1001
- (6) If the information on the alcohol tax incentive payment application by the alcohol distributor does not match the information on the gasoline distributor's report or other information supplied to the division, the division will withhold payment of the alcohol tax incentive until such time as the division can determine the accuracy of the alcohol tax incentive application.
- (7) The report may include an application for refund of the basic gasoline license tax on gasoline which was used to denature alcohol. The application for refund shall include:
- (a) the gallons of anhydrous alcohol which were denatured by the alcohol distributors;
 - (b) gallons of gasoline used in denaturing; and
 - (c) the total amount of refund of gasoline tax per gallon pursuant to 15-70-521, MCA.
- (8) Original bills of lading, or invoices, or copies shall be attached to each report which contains an application for refund of the basic gasoline license tax on gasoline which was used to denature alcohol.

18.9.604 Payment of Alcohol Tax Incentive (IS HEREBY REPEALED)

18.9.605 Offsets

- (1) The division shall offset against any alcohol tax incentive payments which are due under the act:
- (a) any overpayment or unauthorized payment made on prior alcohol tax incentive applications; and
 - (b) any finally assessed tax due from the alcohol distributor under Title 15, MCA.

18.9.606 Quarterly Reports

- (1) The department may require quarterly reports from the applicant during the 18-month grace period to ensure alcohol implementation is on schedule.

18.9.607 Cancellation or Denial of License

- (1) The department may cancel or deny a license if it is discovered that the applicant has provided inaccurate information to the department.

18.9.608 Use of Montana Products

- (1) The payment of the alcohol tax incentive will be based solely on the percentage of Montana products, including Montana wood or wood products, that are used in the production of anhydrous ethanol.

Sub-Chapter 7 - Administration

18.9.701 Waiver of Motor Fuel Penalties

(1) The department may waive the motor fuel late file and late pay penalties for gasoline, aviation fuel and special fuel if there is "good or reasonable cause." Good or reasonable cause means any late filing and late payment of a motor fuel tax for any of the following reasons:

- (a) Inability to file and pay because of an act of God, a natural disaster, or emergency declared by the governor or the president of the United States;
- (b) Inability to file and pay because of seizure of property by a foreign government or a court of law;
- (c) Inability to file and pay because the distributor's assets are impounded or frozen because of bank failure; or
- (d) Inability to file and pay because of a serious medical emergency of the taxpayer.

(2) The failure to file and pay the motor fuel taxes for the foregoing reasons are the only ones that will be accepted as good or reasonable cause that result in a waiver of the statutory penalties.

(3) The department has the discretion to waive the late pay penalty on an amended or adjusted return if it is determined that the underpayment was not within the control of the distributor.

(4) The administrator may delegate the authority to waive penalties to an employee within the department.

(5) Interest on any motor fuel taxes that are paid late will not be waived or suspended.

18.9.702 Suspension of Penalties

(1) If a distributor fails to timely file and pay any motor fuel taxes and does not have just or reasonable cause, the following penalty provisions will apply:

- (a) A first time offense within a 3-year period of timely filings will result in a 1% penalty assessment with the remaining 9% suspended;
- (b) A second time offense within the same time period will result in a 3% penalty assessment, plus the assessment of the 9% penalty previously suspended;
- (c) A third time late offense within the same time period will result in a 6% penalty assessment, plus the assessment of the 7% penalty previously suspended.

(2) A penalty will not be suspended if a distributor files late four or more times in a 3-year period. The penalty assessment will include the 10% penalty, plus the assessment of the 4% previously suspended.

(3) Tax returns received that the department determines are underpaid do not qualify for a suspension of the late file and pay penalty.

18.9.703 Proration of Interest and Payment Application

(1) Interest charged on delinquent gasoline, special fuel, compressed natural gas and liquefied petroleum gas taxes is 12% a year or 1% a month.

(2) Interest will be calculated daily using the rate arrived at by dividing 12% interest per year by 365 days.

(3) All payments for delinquent accounts, including credits, are first credited to tax, then any remaining excess credited to interest and then to penalty.

18.9.704 Definitions

(1) "Biodiesel" means:

- (a) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or
- (b) a monoalkyl ester that:
 - (i) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and
 - (ii) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) blend stock for distillate fuels, as adopted by the American society of testing and materials.

- (c) Biodiesel is also known as "B-20".
- (2) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

18.9.705 Late File and Pay Penalties When Filing Electronically

- (1) An electronic payment is considered late and is subject to the penalties under 15-70-210 and 15-70-352, MCA, when it is not received by the state's designated depository by 11:59 p.m. on the day that it is due as required under 15-70-113, MCA.
- (2) If an electronic payment is initiated by the department of transportation, and it arrives late through no fault of the licensed distributor, and there were sufficient funds to cover the licensed distributor's motor fuel tax liability, no penalty or interest shall be assessed.
- (3) A motor fuel tax return that is submitted electronically to the department of transportation is considered late if it is not received by 11:59 p.m. on the day it is due as required under 15-70-205 and 15-70-344, MCA.
- (4) When an electronic payment is received late or when a payment that is initiated by the department does not have sufficient funds in the account, interest is charged from the 26th of the month.

ARM Title 18; Chapter 10 - Motor Fuels Tax Division – Other Fuels

Sub-Chapter 1 - Special Fuels User Tax

18.10.101 Payment of Tax (IS HEREBY REPEALED)

18.10.102 Determination of User

(1) A special fuel user is the legal title holder of the vehicle or the person entitled to the immediate right of possession as conditional vendor, leasee or mortgager of the vehicle.

18.10.103 Determination of Public Roads and Highways

(1) Streets, roads, highways, alleys, county roads, county gravel roads, forest service roads (except forest service development roads) and their related structures are accepted as public roads as defined in 15-70-301, MCA. A public road may be under new construction, reconstruction, relocation, or repair, even though it is not recognized as part of the maintained highway system.

18.10.104 Liability For Use on Government Maintained Roads

(1) Special fuel, as referred to in Title 15, chapter 70, MCA, must be taxed when consumed in the operation of a motor vehicle upon public roads or the rights-of-way of which are owned by the state, county, municipality, or other governmental agency regardless of who performs the maintenance thereon.

18.10.105 What Constitutes Special Fuel

(1) Fuel taxable under the Special Fuel Tax Act includes diesel fuel, stove oils, heating oils, burner fuels, kerosene, or any other combination of hydrocarbon fuels used for the operation of motor vehicles, except fuels subject to the Gasoline License Tax or to the license tax on vehicles operated by liquefied petroleum gas or compressed natural gas.

18.10.106 IFTA Agreement

- (1) The department hereby adopts and implements the international fuel tax agreement (IFTA) as set forth in 15-70-121, MCA.
- (2) In addition to being subject to the rules and regulations of the IFTA agreement, an IFTA license holder who is a resident of Montana is subject to the same statutes and rules of a special fuel user under Title 15, chapter 70, part 3, MCA.

18.10.107 Definitions

The following definitions apply for estimating the capacity of a supply tank in diesel-powered vehicles:

- (1) “Automobile” is a self-propelled passenger vehicle that usually has four wheels and an internal combustion engine and is not a pick-up truck or truck. This vehicle is commonly referred to as a car, motor vehicle or automobile.
- (2) “Combination” is a motor vehicle used, designed, or maintained for transportation of persons or property and has two or more axles whose gross weight of 46,000 pounds or a combination of vehicles whose combined licensed weight exceeds 46,000 pounds.
- (3) “Pick-up Truck” is a vehicle licensed under a flat gross vehicle weight (GVW) fee and has a manufacturer’s rated capacity of ¼ ton, ½ ton, ¾ ton or 1 ton. This vehicle, regardless of how it is registered and plated, is also commonly known as a pickup, truck, van or sport utility vehicle.
- (4) “Truck” is a vehicle licensed under graduating gross vehicle

weight (GVW) fees and has a manufacturer's rated capacity exceeding 1 ton, but not exceeding 46,000 pounds.

18.10.108 Estimate of Diesel Powered Vehicles Supply Tanks

- (1) When a diesel powered vehicle is found to have dyed fuel in the supply tank(s) and has been traveling on public roads, the department will assess the special fuels tax on each of the diesel powered vehicle's supply tank(s) as if the tank(s) were full.
- (2) When assessing the special fuel tax on a diesel powered vehicle, the following average supply tank capacities will be used:
 - (a) 17 gallons for an automobile;
 - (b) 27 gallons for a pick-up truck;
 - (c) 63 gallons for a truck;
 - (d) 100 gallons for a combination.
- (3) All assessments of the special fuel tax on diesel vehicles will be rounded for the convenience of the taxpayer and the department.
- (4) The operator or owner of the vehicle may request a hearing if they disagree with the assessed amount.

18.10.109 Reserved

18.10.110 Off-Highway Vehicle/Equipment (was 18.9.322)

- (1) For the purpose of this rule, an "off-highway or off-road vehicle" is defined as a vehicle not designed to transport persons or property upon the public roads and highways of this state, including special mobile (SM) plated vehicles and vehicles with physical characteristics intended for primary use in an off-road manner which may or may not be licensed as special equipment. These vehicles may occasionally move on the public road for purposes such as movement between job sites or repair.
- (2) There will be no restriction for miles traveled on the highway from location to location, so long as such travel is occasional and for those purposes listed above.
- (3) SM-plated vehicles/equipment that have undyed diesel in the supply tank and move on the public roads do not qualify for a refund for the portion used on public roads.
- (4) In order to obtain a refund for off-road or off-highway equipment fueling at a service station, the station must identify on the invoice, receipt or statement the off-road or off-highway piece of equipment being fueled.

18.10.111 Dyed Special Fuel Allowance (was 18.9.323)

- (1) The department will allow the state of Montana, cities, counties, school districts, and federal and tribal governments to use dyed, low sulphur special fuel on the public roads if the following criteria are met:
 - (a) The vehicles are owned by a governmental entity (state of Montana, city, county, school district, federal or tribal government); or
 - (b) The vehicles are leased by the governmental entities (state of Montana, city, county, school district, federal or tribal government) and the lease terms meet the criteria for a "long term lease" as defined in ARM 18.10.302.

18.10.112 Dyed Special Fuel (was 18.9.324)

- (1) The department has adopted the following provisions relating to dye color and concentration requirements for tax-exempt diesel fuel, excluding buses and governmental vehicles.
 - (a) In Montana red dye will be used to identify all tax-exempt special fuel, regardless of the sulfur content of that fuel. Colored special fuel from Canada will be considered tax exempt if the dye concentration has been approved by the Canadian authorities, but it may not be used on public roads.
 - (b) The special fuel will satisfy the federal dyeing requirement if it contains the dye solvent red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard solvent red 26 or contains any dye of a type and in a concentration that has been approved by the commissioner of internal revenue service. The presence of dye at a concentration of 2.0 milligrams per liter (mg/l), or greater is considered to be in violation of 15-70-330, MCA.

- (2) Dyed special fuel can be purchased tax free in Montana and Canada, but it is illegal to use it on the public roads, regardless of where it was purchased, except for the movement of off-road vehicles traveling from one location to another as indicated in ARM 18.10.110 and any vehicles as described in ARM 18.10.111.
- (3) Motor carrier services division officers making a routine stop of a commercial vehicle or visiting a road construction project site may take a fuel sample from bulk tanks and supply tanks of vehicles, equipment and other internal combustion engines. The sample may be analyzed for dye concentration by a laboratory selected by the Montana department of transportation.
- (4) Use of high sulphur dyed special fuel on public roads is prohibited by the federal environmental protection agency (EPA), as set forth in 40 CFR 80.29.
- (5) Contractors may not store and/or use dyed diesel in equipment, motor vehicles, and stationary engines used upon public roads and/or within MDT project limits as defined in 15-70-321, MCA. Contractors in violation of this section are subject to penalties upon conviction as defined in 15-70-330, MCA, and may be suspended for up to 6 months from participating in future MDT contracts.
- (6) The dye must be injected by means of a mechanical injection process to diesel fuel at the terminal rack. All dyed special fuel sold in, imported to, or exported from the state of Montana shall have dye added in accordance with federal requirements of type and quantity and will be injected by mechanical injection systems or by a system approved by the department.
- (7) Exceptions:
- (a) If a mechanical injection system is inoperative, the terminal may “splash dye” special fuel for tax free sales. Terminals must notify the department on the first working day after the injection system becomes inoperative. The terminal shall note on each invoice and bill of lading that the fuel is splash dyed and file a separate fuel tax report for splash dyed fuel. The terminal shall keep records of the date and time the dye injection system became inoperative and when the injection system was made operational. All records shall be kept and be available for inspection upon request of the department or representative.
 - (b) If a mechanical injection system should inject an insufficient amount of dye to meet state and federal standards, the terminal may splash dye keeping the same records as in (a).
 - (c) The terminal operator or his designated representative may splash dye under the above conditions. Each terminal shall keep a record of persons conducting splash dyeing. Transport drivers shall not be listed as persons conducting splash dyeing.
 - (d) Special fuels splash dyed and not meeting all of the above standards shall be considered by the state as undyed fuel and the terminal responsible for splash dyeing the fuel shall be liable for all tax, penalty and interest on the fuel.

18.10.113 Through 18.10.120 Reserved

18.10.121 Quarterly Reports – Tax Payment

- (1) Every special fuel user who is subject to 15-70-302, MCA, must file with the department of transportation a report showing the amount of fuel used during the calendar quarter. The reports are due on or before the last day of the month following the close of a calendar quarter. Calendar quarters end on the last day of March, June, September, and December. Reports shall accompany a payment to the department of transportation for the total amount due.
- (2) Every special fuel user who is subject to 15-70-302, MCA, must submit the quarterly tax report regardless of the fuel usage. Failure to file the quarterly tax report in the time prescribed in 15-70-325, MCA, is considered sufficient cause for revocation of the special fuel user’s permit.

18.10.122 Special Fuel User Tax Bonds – Problem Accounts (IS HEREBY REPEALED)

(History: 15-70-104, MCA; IMP, 15-70-304, MCA; NEW, 1987 MAR p. 1651, Eff. 9/25/87; TRANS, from Dept. of Revenue, Ch. 512, L. 1991, Eff. 7/1/91; REP, 1999 MAR p. 645, Eff. 4/9/99.)

18.10.123 Supporting Documentation for Bad Debt Credit (IS HEREBY REPEALED)

Sub-Chapter 2 – Exemptions from Special Fuels User Tax

18.10.201 Certain Federally Owned Roads

(1) Special fuel will not be taxed when consumed in the operation of motor vehicles upon roads, or the rights-of-way of which are owned by the United States department of agriculture, under the following circumstances:

- (a) When said roads are main tained by any person on their own volition without compensation from any state, county, municipality, or other governmental agency of Montana; and
- (b) When such roads are being built or maintained by any person or contractor under an agreement for such construction or maintenance involving one of the parties of the United States department of agriculture.

18.10.202 Off-Road Usage

- (1) The tax on the use of special fuel by any special fuel user does not apply to the use of fuel in a motor vehicle operated exclusively off the public road. If a motor vehicle is used both on and off the public road, the special fuel tax liability does not apply to the special fuel used to operate the motor vehicle on that portion of travel off the public roads.
- (2) Each special fuel user, except those covered under 15-70-362, MCA, must maintain adequate records of the operations off the public roads, the miles traveled, and the special fuel used to establish that the special fuel user is entitled to the credit for off public road use of such fuel.

18.10.203 Stationary and Auxiliary Engines (IS HEREBY REPEALED)

Sub-Chapter 3 – Special Fuel Permits

18.10.301 Permit Required

- (1) Any person who uses special fuel to perform public works contracts and crushing, paving, and grinding on all public works contracts, regardless of the bid amount, in this state is required to obtain a special fuel user's permit.
- (2) Application for a special fuel user's permit shall be filed upon a form furnished by the department of transportation.

18.10.302 Permit Details

- (1) A special fuel user's permit is valid until December 31 of the year issued unless suspended or revoked for cause.
- (2) Special fuel users= permits are not transferable and are valid only for the person in whose name the permit is issued. Any vehicle displaying a permit other than that of the registered owner must have a valid lease agreement in the vehicle.
- (3) "Long-term lease" means a lease of more than 30 consecutive days with exclusive use.
 - (a) Every special fuel user is liable for the tax on special fuel used in motor vehicles leased long-term to them and operated on the public roads of this state to the same extent and in the same manner as their own vehicles.
- (4) "Short-term lease" means a lease of less than 30 consecutive days, or 30 days or more without exclusive use.
 - (a) Without exception, the lessor is responsible for reporting the operation of all units leased to other users on a short-term lease basis.

18.10.303 Special Fuel User's Registration Card (IS HEREBY REPEALED)

18.10.304 Through 18.10.310 Reserved

18.10.311 Temporary Operation (IS HEREBY REPEALED)**18.10.312 Compliance Bonds (IS HEREBY REPEALED)****18.10.313 Termination of a Special Fuel User's Permit**

- (1) Upon ceasing operations in Montana, each special fuel user subject to 15-70-302, MCA, shall:
 - (a) Submit a final return with the original vehicle permit;
 - (b) Pay all tax, penalty, and interest due;
 - (c) Request cancellation of their special fuel user's permit.
- (2) Any attempt to use a canceled permit is considered a violation of 15-70-302, MCA, and subjects the violator to the penalty provisions.
- (3) When the user's permit is revoked for non-compliance, the permit shall be surrendered and returned with reports through the date of the revocation. Any attempt to use a revoked permit is considered a violation of 15-70-302, MCA, and subject to the penalty provisions of 15-70-314, MCA.
- (4) An invalid permit list is maintained by the department and is distributed to all motor carrier services officers in Montana. A permit on the invalid list or a reproduction of such a permit is subject to confiscation by enforcement officers, and a citation may be issued.

18.10.314 Confiscation of Certain Permit Copies

- (1) A reproduced copy of a special fuel user's permit that is not clear and legible is invalid and is subject to confiscation by motor carrier services division personnel, and authorized employees of the department. The person from whom the permit is confiscated may operate the vehicle by obtaining a clear and legible copy of the permit or by purchasing a temporary trip permit pursuant to 15-70-311, MCA.
- (2) Confiscation of a reproduced copy of a fuel user's permit or Montana IFTA license under this rule does not affect the validity of the original permit issued by the department.

18.10.315 Through 18.10.320 Reserved**18.10.321 Required Records -- Audits**

- (1) Pursuant to 15-70-323, MCA, every special fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state must maintain and keep records, receipts, invoices and other pertinent papers as the department requires and must produce them for the inspection of the department at any time during the business hours of the day. Such records, receipts, invoices, and other pertinent papers must be kept with the corresponding special fuel user's tax return for a period of 3 years from the date the tax return relates. For taxpayers falling under the International Fuel Tax Agreement, records have to be kept for 4 years.

18.10.322 Records When Bulk Storage Involved

- (1) Every special fuel permit holder must maintain a complete stock summary of the gallons of special fuel handled each month reflecting inventories, receipts including direct purchases into vehicles, use, sales, other disbursements, and loss or gain. The stock summary must support physical inventories of bulk storage tanks taken at the close of each calendar month, a record of the special fuel receipts with invoices, and a record of the special fuel disbursements.
- (2) Where a special fuel user maintains bulk storage fuels, an accounting of fuel withdrawals from bulk storage facilities determined by the use of meters or other accurate measuring devices and recorded on invoices or other daily record of own use, must be maintained. A numbered invoice may be issued or an entry on a daily record of own use must be made at the time of each fuel disbursement from bulk storage disclosing:
 - (a) The location of the storage facility where the fuel is withdrawn;
 - (b) The date of disbursement;
 - (c) The number of gallons withdrawn;

- (d) The opening and closing meter readings or other means of determining the quantity withdrawn; and
- (e) The special fuel vehicle permit identification number and/or the unit numbers if the fuel is delivered into the fuel supply tank of the special fuel user's own vehicle; or
- (f) The purpose of the withdrawal if the fuel is withdrawn for the special fuel user but is not delivered into the special fuel user's motor vehicle.

18.10.323 Trip and Fuel Consumption Records

- (1) Every special fuel user subject to 15-70-302, MCA, must maintain a record of all trips made by each vehicle in connection with the special fuel used. Operating records must detail the date and points of beginning and ending of each one way trip; proper designation of highways of operation; total miles traveled; miles traveled in each state; and a complete listing of all purchases of special fuel into vehicles showing quantity, date and location received during each trip. The average miles per gallon (ampg) of each vehicle must also be determined. All operating information must be compiled separately for each vehicle during the calendar month.
- (2) Supporting documents, such as bills of lading, time sheets, driver's trip logs, manifests, weight or scale tickets, odometer readings, and revenue records, must be retained for audit purposes.
- (3) Every special fuel user subject to 15-70-302, MCA, operating a vehicle equipped with an apparatus which permits the consumption of special fuel must maintain a record, including invoices of all special fuel used and placed into the special fuel supply tank of each vehicle.

18.10.324 Failure to Maintain Records

- (1) The department of transportation considers the failure of a special fuel user, who is subject to 15-70-302, MCA, to retain records as specified in 15-70-323, MCA, to constitute reasonable cause for the revocation of the special fuel user's permit under the provisions of 15-70-306, MCA. Records to be kept include special fuel purchase invoices, bills of lading, and trip records.
- (2) The department of transportation will, in the event a special fuel user, who is subject to 15-70-302, MCA, fails to retain the required records, estimate the miles traveled, special fuel purchases, and average miles per gallon to determine the special fuel permit holder's tax liability. These estimates will be based, whenever possible, on records for a portion of the operations of the special fuel user's vehicles consuming special fuels or other available information indicating fuel usage by the vehicles for which reports are being made. In those cases where the records are not adequate to verify the average miles per gallon (ampg) reported and the average cannot be estimated, an ampg specified in (4) will be used.
- (3) If, within 30 days of the date the department issues an assessment based on the ampg, the special fuel user who is subject to 15-70-302, MCA, provides the department with adequate records to verify or estimate special fuel usage for the user's vehicles, the department will review the records and adjust the assessment to the extent necessary.
- (4) The department of transportation will, in the event a special fuel user fails to retain the required records for fuel used in internal combustion engines to produce materials used on taxable projects, use the industry standard or other available information for special fuel usage by the internal combustion engines to calculate the formula for which reports are being made. In the event no industry standards are available, the following ampg standards will be used:
 - (a) trucks and truck tractors whose manufacturers gross vehicle weight rating is 9,000 lbs. or more, 4.5 ampg;
 - (b) pickups and trucks whose manufacturers gross vehicle weight rating is 6,000 lbs. or less than 9,000 lbs., 10 ampg; and
 - (c) automobiles and pickups whose manufacturers gross vehicle weight rating is less than 6,000 lbs., 15 ampg.
- (5) The formula to compute fuel used to produce materials for taxable projects:
 - (a) Asphalt is composed of 94% aggregate (1 cu yd = 1.88 tons).
 - (b) Concrete is composed of 75% aggregate (1 cu yd = 2 tons) .28 gallons per ton is based on industry average (.13 gallons per ton may be used if electrical power is purchased from a commercial source).
 - (c) Example:

Concrete:	100 cu yd of concrete = 200 tons
	200 tons X .75 = 150 tons of aggregate
	150 tons X .28 = 42 gallons (diesel generator)
	150 tons X .13 = 19.5 gallons (electrical power)
Asphalt:	100 cu yd of asphalt = 188 tons
	188 tons X .94 = 176.72 tons of aggregate
	176.72 tons X .28 = 49.5 gallons

Sub-Chapter 4 - Special Fuel Dealers

18.10.401 Special Fuel Dealer License (IS HEREBY REPEALED)

18.10.402 Monthly Reports (IS HEREBY REPEALED)

18.10.403 Dealer Records--Audit (IS HEREBY REPEALED)

18.10.404 Seller Invoices

- (1) Any invoice, receipt or statement used to support any special fuel user's records must contain the following:
- (a) A preprinted number, except when invoices are automatically assigned a number by a computer or similar machine when issued;
 - (b) Name and address of the seller;
 - (c) Name and address of purchaser;
 - (d) The date of sale and type of fuel;
 - (e) Special fuel must be identified as either dyed or undyed;
 - (f) Gallons invoiced;
 - (g) The price per gallon;
 - (h) To establish that the tax has been charged, at least one of the following:
 - (i) The U.S. dollar amount of tax;
 - (ii) The rate of tax; or
 - (iii) A notation that the Montana tax is included in the price.
 - (i) Identification of the vehicle or equipment into which the special fuel is placed; and
 - (j) Identification of the equipment or bulk storage that the gasoline or special fuel is placed into if it is fueled from other than a cardlock. Examples include, but are not limited to, fuel cans, slip tanks, tractors or bobcats.

18.10.405 Special Fuel Dealer Tax Returns (IS HEREBY REPEALED)

18.10.406 Cardtrol Compliance and Administration

- (1) A special fuel seller is responsible for payment of the tax on dyed special fuel dispensed through a cardtrol, keylock, or similar device from an unattended pump or dispensing unit if the seller knows the fuel is sold to a customer who places the fuel directly into the supply tank of a vehicle not defined as or considered an off-road vehicle as in 18.9.322.

18.10.407 Statement for Keylock Cardtrol Reporting

- (1) Any seller who sells gasoline or special fuel to a purchaser through a keylock or cardtrol on which a refund may be claimed in accordance with 15-70-223 and 15-70-362, MCA, shall provide the purchaser with a statement of fuel purchased. The statement may be prepared as frequently as deemed necessary, but one statement must be issued at least every 30 days. To support the accuracy of the statement, the seller shall list or attach a list supporting all information used in the statement.

18.10.408 Special Fuel Dealer's Bond (IS HEREBY REPEALED)

Sub-Chapter 5 - Liquid Petroleum Gases

18.10.501 Payment of Tax for LPG Propelled Vehicle (IS HEREBY REPEALED)

18.10.502 Definition of Liquefied Petroleum Gas (IS HEREBY REPEALED)

18.10.503 CNG and LPG Dealer License

- (1) A person may not act as a compressed natural gas (CNG) or liquefied petroleum gas (LPG) dealer in this state unless the person is a holder of a valid fuel dealer's license issued by the department of transportation.
- (2) Every dealer must apply for and obtain a CNG or LPG dealer license prior to distributing CNG or LPG directly into the supply tank of a motor vehicle for highway use in this state. Application for the CNG or LPG dealer's license must be made on forms provided by the department and must contain information the department deems necessary. Upon receipt and approval of the application, the license will be issued and must be conspicuously displayed at the dealer's principal place of business at, which the fuel is to be distributed in this state.
- (3) Every CNG or LPG dealer who distributes fuel at more than one location needs only obtain one license for all locations. The license must be obtained prior to distributing fuel at any location. The original license or copy of the original must be conspicuously displayed at each location which distributes CNG or LPG fuel.
- (4) Upon cancellation or revocation of the license or discontinuance of distributing CNG or LPG, the dealer must return the license to the department. The name and address of the person or firm retaining records for audit purposes and the disposition of all fuel inventories must be provided when the license is returned.

18.10.504 Quarterly Tax Returns

- (1) Every CNG or LPG dealer must file a tax return with the department on or before the last day of the close of the calendar quarter following the month to which it relates on forms supplied by the department. The CNG return must account for all fuel received, sold, distributed, and used, and must include the amount of fuel tax collected during the calendar quarter, together with any other information the department may require. The LPG tax return must account for the total taxable gallons of fuel sold, the amount of fuel tax collected during the calendar quarter, together with any other information the department may require. The tax returns must accompany a tax remittance, if any, payable to the department of transportation for the amount of tax due.
- (2) Every dealer must submit the quarterly tax return regardless of whether he has distributed fuel during the immediately preceding calendar quarter. Failure to file the tax return will be considered sufficient cause for revocation of the dealer's license, and the license may be revoked as of that date.
- (3) A request for an extension allowed under 15-70-714, MCA, must be received by the department prior to the original due date of the tax return.
- (4) The department of transportation may accept CNG and LPG dealer tax returns without requiring a listing of all individual sales made by those dealers.

18.10.505 Dealer Records--Audit

- (1) Every dealer shall maintain all records necessary to support their CNG or LPG tax returns. The records must account for all changes to CNG or LPG and must include:
 - (a) A record of fuel receipts together with invoices, bills of lading, and other documents relative to the acquisition of fuel; and
 - (b) record of fuel disbursements together with the invoices, as well as bills of lading and other documents relative to the disbursements of fuel.

18.10.506 Dealer Invoices

- (1) An original invoice must be issued at the time of each fuel disbursement into the supply tank of a motor vehicle. Each

invoice must include a consecutive number, date of sale, and total number of gallons sold.

(2) A cardrol and keylock statement with the date of sale and total number of gallons sold will be accepted as an original invoice.

18.10.507 CNG or LPG Dealer's Bond

(1) CNG or LPG dealers will be required to furnish the department of transportation a corporate surety bond or other collateral security or indemnity equivalent to twice the dealer's estimated quarterly CNG or LPG tax if the dealer fails to file timely reports. Failure to timely file as used in 15-70-704, MCA, means:

(a) a dealer has failed to file for more than one reporting period;

(b) a dealer has given the state a non-sufficient fund check or whose non-sufficient fund check was returned as a result of a bank error more than twice; or

(c) a report was returned for inadequate postage more than twice.

(2) In those instances where reports, which have been either solicited or audited, are determined to be inadequate by the department, the reports will be deemed to have not been timely filed.

ARM Title 18; Chapter 11 – Motor Fuels – Seizure

Sub-Chapter 1 - Seizure of Improperly Imported Fuel

18.11.101 Definitions

For the purpose of these rules, the following definitions apply:

- (1) "Department" means the department of transportation.
- (2) "Licensed Montana distributor list" means a list of all gasoline, aviation, and special fuel dealers currently licensed in the state of Montana and any licenses issued or canceled with an effective date of the first of the month. The department shall update the list the first working day of each month and distribute the updated list by mail to all motor carrier services (MCS) officers within 5 working days. The updated list must also be accessible to MCS officers on the department's computer system within 2 working days of the update.
- (3) "Seizure list" means a list containing the names of companies appearing on the warning list that have been issued a notice to appear for improperly importing fuel. The fuel tax management and analysis unit (FTMA) shall establish and maintain the list on the department's computer system. The list must be updated within 2 working days from the date MCS notifies FTMA that a company has been convicted by a court. If a company whose name is placed on the seizure list becomes a licensed distributor in the state of Montana, the company's name will be removed from the seizure list within 2 working days after the effective date of licensure.
- (4) "Warning list" means a list established and maintained by the department indicating that a warning notice has been issued to a transporter for improperly importing fuel. The FTMA unit will update the list within 2 working days after notification by MCS. The updated warning list will be accessible to MCS officers on the department's computer system. If a warning notice is issued by an MCS officer for improperly importing fuel, the company name of the transporter, consignor, and consignee of the fuel, as listed on the invoice or bill of lading, will be added to the warning list upon verification by the FTMA unit that none of the listed parties are licensed distributors in the state of Montana. If any or all of the parties issued a warning notice for improperly importing fuel become licensed fuel distributors in the state of Montana, they shall be removed from the warning list within 2 working days of the effective date of the license.

18.11.102 Seizing Improperly Imported Fuels

- (1) If an MCS officer determines that neither the transporter, consignor, nor consignee is a licensed fuel distributor in the state of Montana and any one of the transporters, consignors, or consignees is listed on the warning list defined above, the MCS officer shall issue a notice to appear to the transporter, consignor, and consignee for violation of 15-10-233 or 15-70-357, MCA, for improperly importing fuel. Upon conviction, the company's name must be placed on the seizure list.
- (2) If an MCS officer determines that a load of fuel should be seized, the officer shall first obtain verification and approval from one of the department officials in the following order of precedence:
 - (a) Administrator, administration division;
 - (b) Administrator, motor carrier services division;
 - (c) Chief of the compliance bureau, motor carrier services division;
 - (d) Area captain, motor carrier services division; or
 - (e) Manager, FTMA unit.
- (3) Upon obtaining approval to seize a load of fuel, an MCS officer shall escort the load to a licensed fuel distributor in the state of Montana that is under contract with the department to receive and purchase seized fuel. The seized fuel must be escorted to the nearest licensed bulk distributor that indicates it can accept the entire load of fuel into bulk storage within 12 hours from the time approval to seize the load of fuel is received by the seizing officer.
- (4) If the operator of the transport tanker carrying the seized fuel refuses to operate the vehicle and unload it at the location designated by the MCS officer, the officer shall:
 - (a) Notify the transport company of the seizure and give it 12 hours to provide another driver to operate the vehicle and unload the tanker at the location specified by the MCS officer; or
 - (b) Request that a towing company tow the entire tanker to the towing company's location to be impounded at the towing company's lot by the MCS officer. In this case the transport company shall pay any towing and impoundment charges.

18.11.103 Notification of Seizure of Fuel

- (1) The department shall notify the transporter, consignor, and consignee in writing by certified mail within 48 hours of seizure that a load of fuel has been seized.
- (2) The department shall provide the transporter, consignor, and consignee a blank form with which to claim interest or title to the seized fuel and/or request a hearing. Parties may use the form to claim interest or title to the fuel, and must request any desired hearing within 30 calendar days after the date of seizure. Claims received and postmarked after 30 days are automatically denied.

18.11.104 Conduct of Hearing for Claim or Title to Seized Fuel

- (1) Upon receipt of a timely filed claim or request for hearing, the department shall schedule a hearing at department headquarters in Helena, Montana, within 5 working days of the receipt of the request. The hearing may be scheduled by telephone, but all interested parties shall be notified of the hearing in writing by certified mail within 2 working days from the date the meeting was scheduled.
- (2) The hearing shall be conducted by the department's chief of staff who shall serve as the hearings officer. If the chief of staff is unable to serve as the hearings officer, he shall select as an alternate a division administrator from within the department who was not involved in the decision to seize the fuel in question. The hearing may include representation by the department's legal unit and FTMA unit for the purpose of legal and technical consultation only.
- (3) The hearing may include all parties claiming interest or title to the seized fuel and their legal representatives.
- (4) Upon the conclusion of the hearing, the hearings officer shall determine that either:
 - (a) The parties claiming interest or title to the fuel shall forfeit title and interest in the fuel and the department shall deposit the proceeds from the sale of the fuel into the general fund of the state of Montana within 5 working days less tax, penalty, transportation cost and administrative costs; or
 - (b) The department shall reimburse those claiming interest or title in the fuel the wholesale price of the fuel on the day it was seized, less tax and penalty owed to the state of Montana, within 10 working days from the date of final determination by the department.
- (5) The department shall provide written notice of the determination of the hearings officer to those persons claiming interest or title to the seized fuel within 2 working days after the date of the hearing.

18.11.105 Determination of Wholesale Price of Fuel

- (1) The price the department charges a contracted licensed distributor for seized fuel shall be no less than the wholesale price as determined by this rule.
- (2) The wholesale price of seized fuel shall be determined by averaging the price of fuel from three major refineries in the state of Montana on the day the fuel was seized.
- (3) If the load of seized fuel contains more than one type of fuel, an average price will be determined for each type of fuel seized and the total values of each type of fuel will be added together to determine the wholesale value of the load of fuel.

18.11.106 Contracting for Purchase of Seized Fuel

- (1) The department's purchasing bureau shall contract for the purchase and disposition of seized fuel.
- (2) The following requirements shall be included in any contract for the purchase and disposition of seized fuel:
 - (a) The distributor must be able to accept an entire load of fuel at a single location within 12 hours of notification by the department that a load of seized fuel is available.
 - (b) The distributor may bid on the award of contracts in any or all of the department's 5 districts. Seized fuel may be unloaded at a location within the district where the fuel was seized or at a location in an adjoining district, whichever is closer. The location must be able to accept the entire load of fuel.
 - (c) Any distributor awarded a contract for purchase and disposition of seized fuel shall accept into storage all grades of gasoline, clear diesel fuel, dyed diesel fuel, aviation fuel, and kerosene.

Reference web sites:

www.state.mt.us
www.mdt.state.mt.us

By cooperative agreement, the Montana Department of Transportation exchanges fuel tax information with other tax collecting agencies.

Alternative accessible formats of this document will be provided on request.

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